

EXHIBIT C

In the Matter Of:

BISSONNETTE vs PODLASKI

1:15-cv-00334

ELYSE FAITH CHENEY

January 27, 2017



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ELYSE FAITH CHENEY
BISSONNETTE vs PODLASKI

January 27, 2017

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF INDIANA
3 -----X
4 MATTHEW BISSONNETTE,
5 Plaintiff,
6 -against- Index No:
7 1:15-cv-00334
8 KEVIN PODLASKI and CARSON BOXBERGER, LLP,
9 Defendants.
10 -----X
11 EXAMINATION BEFORE TRIAL of a
12 Non-Party Witness, ELYSE FAITH CHENEY, by the
13 Defendant, pursuant to Subpoena, held at the
14 offices of Young, Conaway, Stargatt & Taylor,
15 LLP, 1270 6th Avenue, Suite 2210, New York, New
16 York 10020, on January 27, 2017, at 10:10 a.m.,
17 before a Notary Public of the State of New
18 York.
19 *****
20
21
22
23
24
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1 A P P E A R A N C E S :
2
3 JOHNSTON, TOBEY & BARUCH
4 Attorney for Plaintiff
5 3308 Oak Grove Avenue
6 Dallas, Texas 75204
7 BY: RANDY JOHNSTON, ESQ.
8
9
10 FURMAN, KORNFELD, & BRENNAN, LLP
11 Attorney for Defendants
12 61 Broadway, 26th Floor
13 New York, New York 10006
14 BY: A. MICHAEL FURMAN, ESQ.
15
16 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
17 Attorneys for Non-Party Witness
18 1000 North King Street
19 Wilmington, Delaware 19801
20 BY: ELENA NORMAN, ESQ.
21
22
23
24
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1 S T I P U L A T I O N S
2
3 IT IS HEREBY STIPULATED AND AGREED by
4 and between the attorneys for the respective
5 parties herein, that filing, sealing and
6 certification be and the same are hereby
7 waived.
8 IT IS FURTHER STIPULATED AND AGREED
9 that all objections, except as to the form of
10 the question shall be reserved to the time of
11 the trial.
12 IT IS FURTHER STIPULATED AND AGREED
13 that the within deposition may be signed and
14 sworn to before any officer authorized to
15 administer an oath, with the same force and
16 effect as if signed and sworn to before the
17 Court and that a copy of this examination shall
18 be furnished without charge to the attorney
19 representing the witness testifying herein.
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1
2 ELYSE FAITH CHENEY, the
3 witness herein, having been first duly sworn by
4 a Notary Public of the State of New York, was
5 examined and testified as follows:
6 EXAMINATION BY
7 MR. FURMAN:
8 Q. State your name for the record, please.
9 A. Elyse Faith Cheney.
10 Q. State your address for the record,
11 please.
12 A. 62 Montague Street, Apartment 9A,
13 Brooklyn, New York 11201.
14 Q. Ms. Cheney, good morning.
15 MS. NORMAN: Excuse me. I'm
16 sorry to interrupt. My name is Elena
17 Norman; I'm a partner of the firm,
18 Young, Conaway, Stargatt & Taylor; I'm
19 here on behalf of the witness who is a
20 non-party in this proceeding.
21 Q. Ms. Cheney, good morning. A couple of
22 ground rules for today. Everything that we're
23 doing is on the record so the reporter can only
24 take us down one at a time, so this isn't a
25 normal conversation where we can talk over one

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1 E. CHENEY
2 another. We have to wait, stop, and then,
3 after I ask a question, you would answer. Do
4 you understand?
5 A. Yes.
6 Q. Another important feature is that all of
7 your answers have to be verbal, so you can't
8 nod or, as you would in conversation, say
9 Uh-huh; you would have to say yes, no, or just
10 answer.
11 MS. NORMAN: You can nod, but
12 you have to do the other thing too.
13 THE WITNESS: Yes, right.
14 MR. JOHNSTON: Can I also have
15 an agreement? This we haven't talked
16 about before; our position is that in
17 some respects, for some period of time,
18 certainly, we've viewed Ms. Cheney as
19 Matt's agent and that communications
20 with Matt's lawyers would be privileged
21 because she is his agent. What I will
22 request, is that if I make no objection
23 and allow her to answer questions to the
24 extent that might arguably be
25 privileged, I have waived the privilege

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1 E. CHENEY
2 on that question, but that will not be
3 used to argue for a broader waiver of
4 the privilege.
5 MR. FURMAN: I'm not sure if I
6 understand it, but I think I guess my
7 response would be let's take it as it
8 comes and, depending on what the issue
9 is, the question and the answer,
10 whatever your objection is, if we have
11 an issue about it, we can always bring
12 it to Judge Collins. So I don't have
13 any problem with any objections that you
14 make on the record.
15 MR. JOHNSTON: Let me be clear
16 that I am fine -- I will consider that
17 if I don't say "objection, privilege,"
18 if that conversation had been
19 privileged, I have waived the privilege
20 by not objecting. If there is something
21 I really want to assert the privilege
22 on, I will affirmatively so state. What
23 I hope you will agree to with me,
24 however, is on those questions where I
25 don't object, the fact that I have

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1 E. CHENEY
2 waived the privilege on that question,
3 will not be used to argue that I can't
4 assert it on some other question later,
5 that it's a limited waiver and a limited
6 assertion.
7 MR. FURMAN: I think I
8 understand. I just don't know whether
9 there's a legal basis for a limited
10 waiver versus a general waiver. I don't
11 know that we'll have the time to argue
12 that point, so your objections are
13 preserved; I think our rights are all
14 preserved as well. Again, you can
15 always rehash this with the judge.
16 These are legal questions that don't
17 have anything to do with Ms. Cheney.
18 MR. JOHNSTON: My point is, the
19 agreement allows me to let her answer
20 questions where I otherwise would object
21 and assert the privilege. If you want
22 me to simply to object and prevent
23 answers on things that I don't care
24 about, but might be key to open the door
25 to other things, I'll do it.

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1 E. CHENEY
2 MR. FURMAN: No, I'm not asking
3 you to do that because it would then
4 require Ms. Cheney to come back another
5 time.
6 MR. JOHNSTON: Exactly.
7 MR. FURMAN: So we don't need to
8 do that.
9 MS. NORMAN: And to be clear,
10 Ms. Cheney is not coming back another
11 time; you have her time with her; we're
12 here today.
13 MR. FURMAN: I mean, this is all
14 pursuant to a subpoena, so I can't agree
15 to that because that would be a court
16 who would intervene if this deposition,
17 for one reason or another, were
18 destructed. I'm not waiving a right; so
19 I hear what you're saying. I take it on
20 board, but I'm not waiving any rights;
21 I'll take it as comes.
22 MS. NORMAN: I'm just stating
23 for the record, Ms. Cheney's position
24 that today is your day with her and so
25 if you have questions that you're not

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1 E. CHENEY
2 asking today because you may want to
3 save them for another time, my only
4 purpose in stating this is to make sure
5 that you're on notice from our
6 perspective, this is your day with her.
7 Sure, you may have other reasons that
8 you go to the court and seek something
9 to be continued, based on something you
10 don't know now, but what I'm saying is,
11 our understanding and expectation is
12 that today is your day with Ms. Cheney.
13 MR. FURMAN: Thank you very
14 much. Thank you everyone for outlining
15 your positions.
16 Q. Ms. Cheney, good morning. In addition
17 to the other instructions, keeping your answers
18 verbal, waiting until I ask the question. I
19 also ask that if you don't understand a
20 question I ask, that you let me know, and I
21 will rephrase it or have it repeated back to
22 you. Is that understood?
23 A. Yep.
24 Q. One last question, is there anything
25 that is preventing you today from answering

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1 E. CHENEY
2 your questions completely and truthfully?
3 A. No.
4 Q. What did you do to prepare for today's
5 deposition? What activity?
6 A. As I was -- Elena -- we just went
7 through the documents that -- the e-mails that
8 had transpired between Podlaski and Matt and
9 myself, and we just discussed how this kind of
10 thing operates.
11 Q. How long was that process?
12 A. Two hours -- three hours, maybe.
13 Q. Where did you get the e-mails that you
14 reviewed?
15 A. From my inbox.
16 Q. So you didn't have a paper file that you
17 reviewed? You looked in your own e-mail?
18 A. No, inbox and printed out the e-mails.
19 Q. Did you meet with Mr. Johnston?
20 A. No.
21 Q. At any point in the past several years
22 now, have you met with Mr. Johnston?
23 A. No, this is first time I'm meeting him.
24 Q. Have you spoke to him on the phone?
25 A. Yes.

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1 E. CHENEY
2 Q. On how many occasions?
3 A. I don't know. I mean, I have no idea.
4 Q. More than once?
5 A. More than once.
6 Q. Was it five times?
7 A. Yeah, maybe between five and ten; I'm
8 not really sure, to be honest.
9 Q. Did you discuss this particular case?
10 The case against my clients?
11 A. Yes.
12 Q. You know who I represent; correct?
13 A. Yep.
14 Q. I represent Carson Boxberger and Kevin
15 Podlaski?
16 A. Yes.
17 Q. What did you discuss with Mr. Johnston?
18 MS. NORMAN: I instruct the
19 witness to pause; I don't know if this
20 is an area where Counsel --
21 MR. JOHNSTON: No, it is.
22 MS. NORMAN: -- wants to
23 instruct the witness or wants to
24 instruct the witness not to answer and
25 also -- or if there is a limited way in

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1 E. CHENEY
2 which she can list the topics, as you
3 would, on the privilege log, and then we
4 would leave it at that.
5 MR. JOHNSTON: Yes, as the
6 question is asked, with regard to
7 everything she discussed and every
8 period of time, I think there clearly
9 was a period of time where she was, and
10 may even to this day be,
11 Mr. Bissonnette's agent with regard to
12 the preparation and filing of this
13 lawsuit and assisting him in that
14 regard, and my communications with her
15 would be privileged as she would be the
16 agent for the plaintiff. And so as that
17 question is asked, I would, on behalf of
18 Mr. Bissonnette, request that she refuse
19 to answer.
20 MS. NORMAN: Well, so I would
21 instruct the witness not to answer -- to
22 go into the substance of the
23 conversations, but you can list at a
24 high level just what, you know, what
25 were the topics, like, the lawsuit, the

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1 E. CHENEY
2 complaints.
3 MR. JOHNSTON: I agree with
4 that. I would not direct her -- I
5 believe she can discuss the general
6 topics of what was discussed; I agree
7 with that.
8 MS. NORMAN: At a very high
9 level.
10 A. I get it. He just took me through what
11 the procedures are for this kind of case.
12 Q. Was that discussion before the lawsuit
13 was filed in New York?
14 A. Yes.
15 Q. Have you ever entered into a retainer
16 agreement with Mr. Johnston or his law firm?
17 A. No.
18 Q. Did you ever enter into any kind of
19 written agreement with Mr. Johnston and his law
20 firm with respect to Mr. Bissonnette?
21 A. No.
22 Q. Have you participated in phone calls or
23 conference calls with Mr. Bissonnette and
24 Mr. Johnston or any members of Mr. Johnston's
25 firm?

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1 E. CHENEY
2 A. No.
3 Q. Do you have an understanding that
4 Mr. Johnston represented you in any way?
5 MS. NORMAN: Objection.
6 MR. FURMAN: I'm just asking
7 her, her understanding. I'm asking just
8 her understanding.
9 MS. NORMAN: One way or another,
10 you're not --
11 MR. FURMAN: Yes.
12 MS. NORMAN: So the question is
13 just, do you think Mr. Johnston --
14 Q. My question was as I stated it. Do you
15 have an understanding, one way or another, as
16 to whether Mr. Johnston has ever represented
17 you?
18 MS. NORMAN: As a lawyer.
19 A. Only in so far as I represent Matt.
20 MR. FURMAN: Rather than spend
21 time outlining all the questions I would
22 ask about the specific conversations
23 that Ms. Cheney had with Mr. Johnston,
24 I'm going to mark this for a ruling.
25 We'll ask Judge Collins as to whether I

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1 E. CHENEY
2 would be permitted to ask those
3 questions based on the objection and the
4 instruction not to answer. So I'll just
5 park that just so you're aware I would
6 be asking very specific questions about
7 the conversations that took place
8 between Ms. Cheney and Mr. Johnston;
9 when they were, what the substance of
10 those conversations were, and what
11 information you gave to Mr. Johnston,
12 what information Mr. Johnston gave you.
13 Rather than spend two hours asking those
14 questions, I'm simply just going to
15 outline that would be the subject area.
16 I understand the instruction by
17 Mr. Johnston; I also understand the
18 instruction by your lawyer so I respect
19 that; we will leave it for the court to
20 ultimately decide that.
21 MR. JOHNSTON: Let me put on the
22 record my offer as stated previously
23 and, maybe, this is a slight alteration
24 of that. If we can agree that the
25 privilege is not waived, I will permit

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1 E. CHENEY
2 her to answer all of those questions so
3 long as our right to assert the
4 privilege and prevent their use at trial
5 is preserved, so that will prevent her
6 from ever having to come back for a
7 second deposition. You can ask your
8 questions; get your answers. If and
9 when there is an attempt to use them at
10 trial, we will assert the privilege at
11 that time, and the court will rule upon
12 it.
13 MR. FURMAN: Okay. That's fair
14 enough.
15 MR. JOHNSTON: As long as our
16 privilege is preserved, I'm fine with
17 her answering the question.
18 MR. FURMAN: Sure.
19 Q. So then, we've decided, if you've
20 followed along, that we could ask the
21 questions. So the questions are when was the
22 first time that you met Mr. Johnston?
23 A. Well, I just met him this morning. You
24 mean by phone?
25 Q. Yes, by phone?

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1 E. CHENEY

2 A. I don't know the date.

3 Q. Was it before or after this lawsuit was

4 filed in New York?

5 A. Before.

6 Q. Was it several months before? Weeks

7 before? Days before?

8 A. Probably months.

9 Q. Do you recall whether it was the summer?

10 Fall? Spring?

11 A. No.

12 Q. You don't recall the year, as you're

13 sitting here today?

14 A. I don't actually.

15 Q. I understand. I'm just asking if you

16 did remember that?

17 A. No.

18 Q. What was the conversation? What did you

19 discuss?

20 A. He explained that he was going to be the

21 lawyer for Matt in a malpractice suit against

22 Kevin Podlaski. I think he just asked me to

23 take him through the facts of the case as I

24 understood them. He asked me to send any

25 e-mails that had gone back and forth between me

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1 E. CHENEY

2 and Podlaski; he asked -- I'm trying to

3 remember -- so, you know, I sent him a package

4 of the e-mails; I'm trying to remember,

5 honestly -- we talked about the outlines of the

6 publishing industry, how it works, and what my

7 role is in representing Matt. I'm trying to

8 remember, you know, what my understanding of

9 the situation was; how I perceived it.

10 Q. Let's start with the last thing.

11 A. Sure.

12 Q. What did you tell Mr. Johnston about the

13 situation and how you perceived it?

14 A. In terms of Podlaski's role in this?

15 Q. Yes. I want to know what you told

16 Mr. Johnston?

17 A. Yeah, I get it. I told him how I met

18 Podlaski.

19 Q. What did you tell him about that?

20 A. I -- another agent at a different firm

21 who represents Kevin Maurer, who's the writer

22 on the project, suggested Kevin Podlaski as a

23 possible lawyer for Matt.

24 Q. What else did you tell Mr. Johnston?

25 A. I spoke to Podlaski and I spoke to

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1 E. CHENEY

2 another lawyer as well, in advance of my

3 introducing both of them to Matt. And Podlaski

4 told me that he was a special prosecuting

5 attorney for JAG for twenty-five years and that

6 he had security clearance and could vet the

7 manuscript himself; the manuscript that Matt

8 was intending to write about the bin Laden

9 raid.

10 Q. Who is the other lawyer that you spoke

11 to?

12 A. He was named Randy Moss.

13 Q. What did Randy Moss tell you?

14 A. Randy Moss didn't -- actually, let me

15 just continue on Podlaski -- Podlaski said that

16 he -- that if Matt -- Matt did not have an

17 obligation to show the manuscript to the

18 government for prepublication review because he

19 was retired or retiring and, therefore, it was

20 optional for him to show the manuscript. And

21 that he suggested that it didn't make sense to

22 show the manuscript to the government because

23 they would just take a very long time to get

24 back to Matt and, you know, were not that easy

25 to deal with and that he could then -- what

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1 E. CHENEY

2 would be better, would be for him to vet the

3 manuscript -- that he had done so for another

4 client of the other literary agent, a guy named

5 Dalton Fury, who I believe had written a book.

6 I think that Dalton is a Delta Force guy; he's

7 another Special Forces guy and that he was

8 qualified to do that. Randy said, the other

9 lawyer, that he actually never dealt with this

10 before; he didn't know the answers to this; he

11 was going to talk to a colleague who, then,

12 also didn't know the answers, and that he was

13 considering then, potentially, he should just

14 call the government to find out what to do

15 about it.

16 Q. Now, that's in substance what you told

17 Mr. Johnston about how you met Mr. Podlaski?

18 A. Yeah, what happened, yeah.

19 Q. Can you describe for me what you told

20 Mr. Johnston about what you described as the

21 back and forth between yourself and

22 Mr. Podlaski?

23 A. I mean, I don't remember specifically

24 what I told to him, but if you're wanting to

25 know if --

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1 E. CHENEY

2 Q. I just want an overview of what you told

3 Mr. Johnston. I'm going to get into the

4 details of all that later today.

5 A. Yeah, okay.

6 MS. NORMAN: Are you still

7 talking about the first conversation?

8 MR. FURMAN: Yes.

9 A. I'm not sure if this was first

10 conversation, but over many times that I talked

11 to him, this is what it could be. You know, I

12 think that we -- I'm trying to think what else

13 we talked about with regards to Mr. Podlaski.

14 I -- I -- I'm not sure, but then he -- we

15 talked about where publishing was set, you

16 know, was the business in New York primarily, I

17 said yes, I believe that he must have taken --

18 actually, I don't know, through the sequence of

19 events of my interactions with Podlaski. Did I

20 -- did Matt speak to him, you know? Did Matt

21 decide himself to hire Podlaski? What was my

22 involvement in that decision? Where did the

23 retainer -- did I have a copy of the retainer

24 or who -- who -- how -- what was the path

25 through which Podlaski and I, how often did I

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1 E. CHENEY

2 talk to him? How involved was I in, like, all

3 this communication between Podlaski and Matt?

4 And what Matt's legal obligations were?

5 Q. At the time that you had the

6 conversation with Mr. Johnston, had you, you

7 yourself come to any view about whether

8 Mr. Podlaski did anything wrong?

9 A. Yes.

10 Q. What was your view?

11 A. My view is that he -- I don't know if he

12 broke the law, but that he did not tell the

13 truth.

14 Q. In what sense?

15 A. Either he did not tell the truth or he's

16 incredibly ignorant because he -- it turns out,

17 from what I understand, that he in fact, he had

18 no business saying that he can vet a manuscript

19 for a person from Special Forces; that the

20 issue of whether or not Matt was retired was

21 irrelevant; that it was not optional for Matt

22 to show -- he had to show whatever he writes, a

23 manuscript to the government before

24 publication, so --

25 Q. Did you come to those conclusions before

Page 23

1 E. CHENEY

2 you had spoken to Mr. Johnston?

3 A. Yes.

4 Q. Where did you get that notion from?

5 A. Where do you think? I got the notion

6 from the fact that Matt received a letter from

7 the government stating that that was the case.

8 Q. Did you arrive at that notion around the

9 time that the letter from Mr. Johnson came down

10 on August 30th of 2012?

11 A. No, it took me a long time to understand

12 exactly what was going on.

13 Q. Well, who helped you understand what was

14 going on in that sense?

15 MS. NORMAN: Objection to form.

16 THE WITNESS: What does that

17 mean?

18 MS. NORMAN: You have to answer;

19 it's just for the record that I think

20 the question is assuming that people

21 told you things as opposed to you

22 forming an opinion yourself.

23 MR. FURMAN: I'm going to

24 rephrase it; you're absolutely right.

25 MS. NORMAN: Of course, I'm

Page 24

1 E. CHENEY

2 right.

3 MR. FURMAN: Well, I'll give you

4 that one right now.

5 MS. NORMAN: That's why I'm

6 here.

7 MR. FURMAN: I feel like you and

8 I are going to have some disagreements,

9 but I'm definitely going to give you

10 that one.

11 Q. So I'll rephrase the question. I'm

12 going back to where you had testified that you

13 had a notion that Mr. Podlaski had done

14 something wrong, was either untruthful or, as

15 you described, "ignorant," and I want to

16 explore how you arrived at that conclusion. So

17 let me ask you just in a general sense, how did

18 you arrive at that conclusion when you first

19 met with Mr. Johnson?

20 MR. JOHNSTON: Objection to

21 form.

22 MS. NORMAN: Objection to form.

23 Question implies that she arrived at

24 that conclusion when she first met with

25 Mr. Johnson.

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1 E. CHENEY

2 MR. FURMAN: She testified that

3 she had that conclusion at the time that

4 she had met Mr. Johnson.

5 MS. NORMAN: Right, she came to

6 this having already reached that

7 conclusion.

8 MR. FURMAN: Right, I just want

9 to know how she reached that conclusion.

10 MS. NORMAN: I just want to be

11 clear that the way you phrased it just

12 now made it seem like she reached that

13 conclusion in connection with her

14 discussions with Mr. Johnston so.

15 MR. JOHNSTON: That's what I

16 thought too.

17 MR. FURMAN: Why don't we do

18 this; it's going to be struggle for me;

19 I'm not nearly intelligent enough to

20 follow all of your objections and, just

21 as a practical matter, under federal

22 rules, speaking objections are

23 permitted; so if you have an objection

24 to form, just say it; I'll live with the

25 consequences of asking an awful

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2 question.

3 MS. NORMAN: That's fine. I

4 think -- you know, look, I have no

5 interest in making objections for the

6 sake of it. I prefer that this

7 deposition happens and be done, but I

8 also have an obligation to my client to

9 make sure the record is clear. I will,

10 you know, keep my objections to form, to

11 the extent possible, but I would ask,

12 perhaps if you could just focus on

13 making your questions a little tighter,

14 that might move this along.

15 MR. FURMAN: I appreciate that.

16 And if I were to search right now how

17 many words have been spoken on the

18 record, I would imagine that the

19 majority of it is lawyers and not Ms.

20 Cheney. I rather the majority, from now

21 on, be Ms. Cheney so we can do this

22 quicker; so thank you for your

23 assistance, and now we're back to what

24 we're here for.

25 Q. Let me just lay the foundation. When

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1 E. CHENEY

2 you met with Mr. Johnston, you had already

3 arrived at a notion that Mr. Podlaski had done

4 something wrong; is that fair to say?

5 A. I think we just said that; right? Yeah.

6 Q. I want to know how it came about that

7 you arrived at that notion?

8 A. It's varying -- lots of input of

9 information from a variety of people over, kind

10 of, a long period of time because it was so

11 hard to believe, to be honest.

12 Q. Let's take some of the players, and I'll

13 ask you specifically. Mr. Luskin told you that

14 Mr. Podlaski had given incorrect or wrongful

15 advice?

16 MS. NORMAN: Objection to form.

17 THE WITNESS: What am I supposed

18 to do?

19 MS. NORMAN: Just answer it.

20 A. It took a while, from what I remember,

21 for Luskin to figure out exactly what was going

22 on, and I'm sure that he did tell me that at

23 some point, yeah.

24 Q. Do you know when he told you that?

25 A. No, I don't know when.

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1 E. CHENEY

2 Q. You referenced it took him a while. Can

3 you describe for me what that period was?

4 A. He had to look into it; he had to talk

5 to people in the government; he got other

6 opinions about it, to figure out exactly what

7 was right; he didn't have all the documentation

8 I think that he needed to determine what Matt's

9 obligations were.

10 Q. Did you have a discussion with

11 Mr. Luskin where he told you that he believed

12 that Mr. Podlaski had done something wrong?

13 A. At some point, yeah.

14 Q. Was it a meeting or was it a phone call?

15 A. No, call.

16 Q. Did you ever meet with Mr. Luskin?

17 A. Not -- it took a while before I met with

18 him and that was, like, just general; it wasn't

19 -- when I met with him at the lunch, and that

20 wasn't nothing to do with the case.

21 Q. Did Mr. Bissonnette tell you, at any

22 point in time, that he believed that

23 Mr. Podlaski had done something wrong?

24 A. I think -- I think -- I'm sure, at some

25 point, we discussed that it didn't look like

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1 E. CHENEY
2 Podlaski had any -- had done the right thing.
3 Q. Was that before --
4 A. But Matt didn't know, I mean, he really
5 did not -- he was confused; as confused as I
6 was.
7 Q. Was that discussion with Mr. Bissonnette
8 before or after your discussion with Mr. Luskin
9 regarding Mr. Podlaski's work?
10 MS. NORMAN: Objection to form.
11 A. I would assume probably after.
12 Q. Is there any other information other
13 than a discussion with Mr. Bissonnette, a
14 discussion with Mr. Luskin that helped you form
15 a conclusion that Mr. Podlaski had done
16 something wrong?
17 A. You know, it sort of gradually came
18 together as various reporters were asking and
19 it just suddenly -- not suddenly -- just
20 started slowly to seem, maybe Matt did have
21 obligations to the government that we didn't
22 know about.
23 Q. Did you assist Mr. Johnston in preparing
24 Mr. Bissonnette for his deposition?
25 A. No.

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1 E. CHENEY
2 Q. Have you participated in any conference
3 calls or meetings with Mr. Johnston where
4 Mr. Bissonnette was either present physically
5 or on the phone?
6 A. I don't think so.
7 Q. A couple of more questions about
8 background and then we'll get into some of your
9 background. I used the word background twice,
10 forgive me. Have you ever testified in a
11 deposition before?
12 A. No.
13 Q. Have you ever been a party to a lawsuit,
14 one way or the other?
15 A. Yes.
16 Q. I don't need to know details of that; I
17 just want know what those cases were and when
18 they were?
19 A. Sure. I believe it's in 2000 I had to
20 sue a client for nonpayment.
21 Q. Did you testify either at a trial or a
22 hearing in the matter?
23 A. No, it settled quickly.
24 Q. Anything else?
25 A. Any other --

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1 E. CHENEY
2 Q. Lawsuits or litigation?
3 A. No, no.
4 Q. I'm going to ask you about your career.
5 You're a literary agent?
6 A. Yes.
7 Q. How long have you been doing that?
8 A. I'm pretty sure I started about 1996,
9 you know, becoming a real literary agent, so
10 twenty years.
11 Q. Because we're all, except for, maybe,
12 one or two people here, people of a certain
13 age, I'm going to ask you some backgrounds and
14 some dates. When did you graduate college?
15 A. 1989.
16 Q. What college?
17 A. University of Pennsylvania.
18 Q. What was your major?
19 A. Well, I did English Literature
20 primarily, yes, that was my major.
21 Q. Did you go to grad school after that?
22 A. No.
23 Q. If you could describe -- before you
24 started your own agency, could you give me a
25 brief description of your professional career?

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1 E. CHENEY
2 A. In publishing?
3 Q. Yes.
4 A. Well, I got a job -- I'm really not --
5 probably in, like, '94 working at a literary
6 agency part-time, reading manuscripts and, you
7 know, doing some writing for this literary
8 agent, and then I started to get some clients
9 because the literary agent I was working with
10 was quite old, and so there was a lot of
11 projects coming in so I just started taking
12 some people on, then, I think, it was in '96
13 that I moved to another company called Sanford
14 Greenburger Associates, which is a midsize
15 literary agency, and I got a job as a literary
16 agent and I was there for eight years, and then
17 about eleven years ago -- I mean, I'm not sure
18 the exact -- but basically eight years I was
19 there, and then eleven years ago, I started my
20 own agency.
21 Q. What is the name of your agency?
22 A. Elyse Cheney Literary Associates, LLC.
23 Q. How many employees do you have?
24 A. I have four employees.
25 Q. Where is your office located?

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1 E. CHENEY

2 A. 78 Fifth Avenue, 3rd floor; it's 10011,

3 I think.

4 MR. JOHNSTON: Off the record.

5 (Whereupon, a discussion was

6 held off the record.)

7 MR. FURMAN: Back on the record.

8 Q. Is there any kind of professional

9 license that you need to have in order to

10 become a literary agent?

11 A. No.

12 Q. Is there any specific kind of training

13 that you would need?

14 A. Yeah, I would say, yeah.

15 Q. What would you describe?

16 A. Specific learning curve or education you

17 need. You need to understand what books a

18 publisher might be interested in and what books

19 the general population might be interested in,

20 so you need to understand the marketplace. You

21 need to understand who the players are; who the

22 publishers are, and who is interested in what

23 topics. You need to have -- you need to have a

24 lot of relationships, deep relationships,

25 really, with publishes across the board; every

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1 E. CHENEY

2 publisher. You need to understand how

3 contracts work; you need to understand how

4 negotiations happen, how authors get paid. You

5 need to understand the foreign markets and

6 whether or not a book, potentially, could sell

7 in foreign markets. You need to understand the

8 film business or have relationships with agents

9 in the film business in order to help sell your

10 -- the ancillary rights to the book project

11 that you represent. You need to be, in my

12 opinion, be able to add it. You need really

13 good communication skills in order to be able

14 to articulate what the book is about and why

15 it's important. You need to have a background

16 in literature.

17 Q. Are there any professional associations

18 that you're a member of in relation to your

19 profession as a literary agent?

20 A. No.

21 Q. Do any exist?

22 A. Yes, but I don't know. I never -- yes,

23 they do exist; I'm just not a member.

24 Q. What is the name of that --

25 A. Association of Author Representatives.

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1 E. CHENEY

2 Q. Do they have meetings that you're aware

3 of?

4 A. I don't know.

5 Q. Have you ever given any lectures or

6 spoken on any topics relating to your

7 profession?

8 A. Yes.

9 Q. Can you tell me when and where?

10 A. I've done a lot of that. I've spoken at

11 various colleges to writing students about how

12 publishing works. I've, you know, what the

13 process is for the book getting taken on by an

14 agent and getting published. I've spoken at

15 conferences where writers gather, you know,

16 with the same kinds of questions. I've been on

17 panels, kind of, all over the country.

18 Q. Can you tell me the last five colleges

19 you've spoken at?

20 A. I've spoken at NYU; I've spoken at the

21 New School; I've spoken at Iowa -- the

22 University of Iowa; Iowa Writers' Workshop;

23 University of Michigan, Squaw Valley Writers

24 Workshop; that's not university associated,

25 though.

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1 E. CHENEY

2 Q. Iowa is kind of random?

3 A. Well, it's not because Iowa Writers'

4 Workshop is the best writers' workshop in the

5 country.

6 Q. Good to know that. When did you speak

7 in Iowa?

8 A. It's not been for a while. I've spoken

9 there several times, but now, usually, I just

10 send other agents in my office there to speak,

11 so one just went last year; I've spoken,

12 probably there, six years ago; seven or eight.

13 Q. Those are also marketing opportunities

14 that you market your agency to potential

15 writers; is that fair to say?

16 A. Yeah.

17 Q. At NYU, when was the last time you spoke

18 there?

19 A. That was in the last -- I, actually,

20 sometimes get confused with NYU and the New

21 School, but I'm pretty sure that was in the

22 last year and a half, and I got asked to speak

23 at CUNY also, but I haven't been able to find

24 the time.

25 Q. The times that you spoke at either NYU

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1 E. CHENEY

2 or the New School, were they also in your mind,

3 marketing opportunities for your agency?

4 A. I mean, it's usually as a favor,

5 honestly, because I don't necessary -- a lot of

6 these places I don't think I'm actually going

7 to find clients at, but, you know, you're often

8 asked by a prominent writer, and you just want

9 to help.

10 Q. You mentioned writers' conferences.

11 Where was the last writers' conference that you

12 spoke at?

13 A. Actually, you know, I did another thing

14 at the -- for the Yale -- I went to a dinner

15 for kids who were undergrads at Yale studying

16 writing and that wasn't a place where I thought

17 I'm going get a client because they're

18 undergrads, but the woman who organizes it is a

19 wonderful writer and so I went to that; that

20 was a dinner that was in the last year.

21 Q. I'll ask you to turn your attention to

22 the conferences. Can you tell me what the last

23 conference was?

24 A. The -- well, it depends if you

25 consider -- for example, if you consider a book

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1 E. CHENEY

2 fair, international book fair, as a conference,

3 I've gone to those.

4 Q. I think what I'm asking is, did you

5 speak there?

6 A. Yeah.

7 Q. Was your name on a brochure?

8 A. Yeah, I think one of them was AWP; I

9 think I did that in Boston several years go.

10 Squaw Valley Writers' Workshop, I've done

11 several years ago; that's kind of a conference.

12 I'm trying to think of other ones; yeah, those.

13 Q. Have you ever been asked to give an

14 "expert" opinion, in one way or another, as it

15 relates to your role as a literary agent?

16 MS. NORMAN: Objection to form.

17 A. From a legal perspective, I don't

18 understand the question.

19 Q. In any perspective?

20 A. I mean, are you thinking about me as an

21 expert as in, like, an expert witness or an

22 expert, as in, can I give my professional

23 judgment about something?

24 Q. Yes. I mean, I like to keep it very

25 broad. I can narrow it down, but I just want

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1 E. CHENEY

2 to know if you have ever been asked to speak as

3 an expert in your particular professional field

4 in any capacity?

5 A. Not in a legal capacity, but everyday as

6 a literary agent, yes, every day I'm asked to

7 give my opinion.

8 Q. Let me narrow it down then. Other than

9 individuals calling you up for your opinion on

10 a particular matter, have you spoken in a

11 conference or in public, before any public

12 body, the government, or in any capacity, have

13 you spoken to an audience about your role?

14 A. Yes.

15 Q. As a literary agent?

16 A. Yes, I've spoken about my role as a

17 literary agent in a public setting.

18 Q. Where?

19 A. Again, I think it's the New School or

20 NYU, I've spoken there on a panel about -- I

21 don't remember the topic; it was some kind of

22 topic around publishing.

23 Q. Is there a brochure that you may have in

24 your office that you could share that would

25 help me understand what you spoke about and

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1 E. CHENEY

2 what the topic was?

3 A. I mean, it's usually -- I don't have a

4 brochure; I could look, but no, I don't have a

5 brochure, but I -- but usually what they ask

6 is: What do you do? What's happening in

7 publishing right now? What does the market

8 look like? Are people still interested in

9 novels? Is it very hard to get a novel

10 published? What kind of nonfiction do you

11 handle?

12 Q. That panel discussion, when did it take

13 place?

14 A. It's in the last year and a half, that

15 one; there were two in the last year I've done.

16 I think one was at, I believe NYU, and one was

17 New School.

18 Q. Have you written any articles about your

19 profession?

20 A. No.

21 Q. Could you just give me, sort of, a

22 thumbnail sketch of how your job works?

23 A. Sure. So clients are referred to me or

24 I see a writer in a magazine doing something

25 interesting and I write to them and if I'm

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1 E. CHENEY

2 interested in their work, I have to read the

3 work and then I ask them to come in and say --

4 I might send them a letter, or if they're

5 coming to me, which is more often the case at

6 this point, then I say, let's have a meeting

7 and we talk about their work and what their

8 aspiration are, and I discuss their careers

9 with them and whether they would like to write

10 a book, you know. And, then, if they're

11 interested in writing a book, we might discuss

12 what is their book idea. I handle a lot of

13 nonfiction, so we talk about what is their

14 story.

15 If it's a memoir, we talk about, you

16 know, what is their expertise and how can they

17 put that expertise onto the page and what does

18 the book look like, what's the process by which

19 a book gets published. We'll talk about --

20 I'll get really inside of their ideas, then

21 either help formulate for them, or they'll have

22 a book idea, then I'll react to what they're

23 saying and say, "well, that's interesting, but

24 this is more interesting" or, you know, give

25 them feedback as to what they're talking about,

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1 E. CHENEY

2 then they'll go and write something or they'll

3 have had something written and I'll react to

4 that, generally, and then put together a

5 proposal for a publisher and I will give them

6 guidelines as to what a proposal looks like,

7 and I'll give them feedback as they write the

8 proposal to say, no, that's not really what I

9 need here; I need this; I need that; tell us

10 more about this, tell us more about that; or I

11 might say this book is already in the market,

12 you know -- I don't know -- give me something a

13 little different here and then, once we have a

14 proposal that I think is adequate, I call

15 publishers, different publishers.

16 There's a editor -- there's editors at

17 each publishing house and they acquire on

18 behalf of the house and so there are several --

19 now, there are several big companies,

20 conglomerates, that have individual imprints

21 than those conglomerates, and I know all the

22 people at these different places, then I'll

23 say, oh, so and so at Random House is very

24 interested in X topic, so I'm going to call

25 them, tell them about this author and this

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1 E. CHENEY

2 project.

3 The same day I'll call all people that

4 are interested -- that I think are potentially

5 interested in this project; I will pitch the

6 book to them and explain why it's so great and

7 why they need to publish it. I will send over

8 the project with a cover letter -- this is

9 generally; it doesn't happen in every case --

10 with a cover letter; they will read it and they

11 will call me, whether or not they're

12 interested. If they're interested, then I will

13 bring the author in, generally, for meetings

14 and will meet with publishers and then I'll

15 conduct, hopefully, an auction and negotiate

16 the terms of the agreement for them. Then they

17 will go back, then the contract will come to my

18 office; I'll look at the contract, look it

19 over, the author signs the contract. They go

20 and write the book, and then once the book is

21 written, I get involved again on the marketing

22 end of things usually, if they need help, and

23 then the book gets published. I'm generally

24 either their liaison with the publisher or the

25 advocate.

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1 E. CHENEY

2 Q. How do you get paid for that service?

3 How does that work?

4 A. They get an advance, which is -- as long

5 as they deliver an adequate manuscript,

6 nonreturnable, and then we take fifteen percent

7 of the advance and any royalties that would

8 come from the book and any derivative rights to

9 the book.

10 Q. Is that fifteen percent fee a standard

11 fee?

12 A. Yes, standard.

13 Q. Is that standard with other literary

14 agents?

15 A. It's pretty standard;

16 ninety-nine percent of literary agents take

17 fifteen percent.

18 Q. And the fifteen percent --

19 A. For the domestic sale of the book.

20 Q. Is there a fee for the foreign sale of

21 the book?

22 A. The foreign sale -- the general rule is

23 twenty percent; ten percent goes to the

24 subagent in a territory who sells the book, and

25 then ten percent comes to our agency.

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1 E. CHENEY
2 Q. The fifteen percent figure, that cuts
3 across royalties, the advances, and any other
4 aspects of the author's income derived out of
5 the book; is that fair?
6 A. Basically, yeah, yeah.
7 Q. So would that also include book signings
8 and appearance fees and other things like that?
9 A. No, no, I don't take any money from
10 that; that's not my business.
11 Q. Do you help arrange book signings and
12 appearances and things like that?
13 A. No, that's the publisher.
14 Q. Is it fair to say that you and your
15 company make more money if the sales, the
16 royalties, and the other income that is derived
17 of the book increases?
18 A. The more a book sells, the more money we
19 make, yes.
20 Q. So your interest, of course, is on
21 behalf of your client, but your financial
22 interest is making that endeavor a success so
23 that both you and your client both equally make
24 more money?
25 MS. NORMAN: Objection to form.

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1 E. CHENEY
2 Q. Is that fair to say?
3 A. I would say, my first interest is in
4 achieving whatever the goals of the client are
5 and a financial interest is, yes, if the book
6 does better, then I do better and the client
7 does better. But you can't always go by that
8 because sometimes, let's say you have an
9 advance -- you have several publishers
10 interested in a book and one publisher might
11 spend -- offer \$100,000 and another might offer
12 \$75,000; I may not advise them -- I mean, it's
13 always up to the author who they want to sign
14 with, but I might not advise them to go with
15 the \$100 because I may say that might not be a
16 good experience for you; go with the \$75.
17 Q. You've mentioned that you do a lot of
18 work in the nonfiction field?
19 A. Yes.
20 Q. Have you worked with writers who were
21 public officials?
22 A. Yes.
23 Q. Could you just give me a roster of those
24 individuals?
25 A. Public Officials? Can you just define

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1 E. CHENEY
2 that?
3 Q. Government officials, people who were
4 either elected officials or appointed official?
5 A. I work with Lieutenant Governor Gavin
6 Newsom. Do you mean anybody who has ever
7 worked for the government?
8 Q. Yes, in other words, I think what I'm
9 after is -- let me find a better way to ask the
10 question. Have you worked as an agent for any
11 former or current government official, either
12 in an elected capacity or an appointed
13 capacity, who wrote a memoir on their
14 experiences?
15 MS. NORMAN: Objection to form.
16 A. Elected or appointed? I mean, like, for
17 example, I represent now an astronaut; would
18 you consider that an elected or appointed
19 person?
20 Q. No. I'll get --
21 A. Because he works for the government,
22 obviously; he works for NASA.
23 Q. I'm going to drill down. I'm just now
24 asking -- just to make you appreciate what I'm
25 asking, I'm thinking of, you know, say,

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1 E. CHENEY
2 President Obama's memoir or say Leon Panetta's
3 book, I know you didn't work on that --
4 A. No, I didn't work on it.
5 Q. -- but I'm thinking along the lines of
6 someone who left office and then either --
7 A. Yeah, Newsom would be the person that I
8 have worked with in the past.
9 Q. I'm going to drill down. Now, I'm
10 turning to government officials, people who
11 work in the public sector and, in that sense,
12 Mr. Bissonnette qualifies.
13 A. I see; right.
14 Q. I'm asking for people who wrote books
15 about their endeavors, working on behalf of the
16 public, either a firefighter or astronaut, as
17 you mentioned, or a police officer, a navy
18 seal, anything in that capacity?
19 A. Now, I represent an astronaut, two
20 astronauts, but I haven't represented them at
21 the time. I represented Valerie Plame --
22 sorry, I don't want to say the name, but, yeah,
23 she's a former CIA.
24 MS. NORMAN: Do you want --- is
25 that public, or is that something that

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1 E. CHENEY
2 needs to be protected, that you
3 represented her?
4 THE WITNESS: I think the fact
5 of my representing her is probably
6 public; it's not a secret.
7 MS. NORMAN: By the way, is this
8 transcript under seal?
9 MR. FURMAN: No, it's not under
10 seal, but there's -- I could tell you my
11 clients have no interest whatsoever in
12 publicizing this case any more than we
13 need to file documents in court; we
14 would like nothing better than to have
15 this all deemed confidential.
16 MS. NORMAN: Is there any
17 objection to just treating this as
18 confidential, under whatever protective
19 order, at least provisionally, until --
20 at least mark it that way today, and
21 then we can address with the witness
22 whether there's anything she deems to be
23 sensitive.
24 MR. FURMAN: I have no interest
25 other than trying to protect my client,

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1 E. CHENEY
2 and I don't have any interest in
3 revealing anything about what your
4 client is saying today, other than in an
5 effort to protect my clients in this
6 lawsuit in Indiana, so there's no
7 protective order that is in place, but I
8 could represent to you that I -- unless
9 there's a specific reason to do it,
10 other than letting the court know, by
11 way of motions and by sharing this
12 transcript with my clients and
13 potentially experts, I don't see any
14 other rationale for disseminating Ms.
15 Cheney's testimony beyond that sphere.
16 MS. NORMAN: I understand what
17 you're saying. So what you're telling
18 me is that there is not a protective
19 order in the case?
20 MR. FURMAN: No.
21 MS. NORMAN: At all?
22 MR. FURMAN: No, it's a publicly
23 filed case.
24 MS. NORMAN: I never had a case
25 that didn't have a protective order.

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1 E. CHENEY
2 MR. FURMAN: We can go off the
3 record for a second. I don't want to
4 clog the record.
5 (Whereupon, a discussion was
6 held off the record.)
7 Q. You mentioned the Valerie Plame book;
8 was there anyone else that comes to mind? You
9 mentioned the astronaut; any other person who
10 wrote a nonfiction book about their experiences
11 working for the government?
12 MS. NORMAN: Objection to form.
13 A. Not that's coming to my head right now.
14 Q. How about military authors? Other than
15 Mr. Bissonnette, have you represented any other
16 military authors?
17 A. No, not in any official capacity for
18 books.
19 Q. In connection with the representation of
20 Ms. Plame, did you go through a prepublication
21 review process?
22 A. Yes.
23 Q. Did that take place before the
24 publication of No Easy Day?
25 A. Yes.

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1 E. CHENEY
2 Q. Were there lawyers involved in that
3 process?
4 A. Yes.
5 Q. Do you know the names of the lawyers
6 involved?
7 A. I don't want to give the name, actually;
8 if you don't mind, if I don't have to.
9 Q. Well, if you're uncomfortable, that's
10 fine. I'll leave a space in the record; if
11 it's necessary, we can ask for it.
12 THE WITNESS: Can we go off the
13 record for a second?
14 MS. NORMAN: Yes, sure. Should
15 we just continue and then at a break, we
16 can talk about it?
17 THE WITNESS: Okay.
18 MS. NORMAN: I'll make a list.
19 So the question is, were lawyers
20 involved in the Valerie
21 Plame prepublication?
22 Q. I take it that you don't want to answer
23 that question and we can leave a space, and
24 then we can discuss during the break -- you
25 will fill in that space.

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1 E. CHENEY
2 A. Yeah.
3 (INSERT)
4 Q. In connection with that process, did you
5 come to learn that there was a mechanism by
6 which the government would review a former
7 government employee's book in order to see
8 whether it would be permitted to be published?
9 MS. NORMAN: Objection to form.
10 A. That was specifically for the CIA. I
11 saw that the CIA -- anybody who had been a CIA
12 like person, would need to go through a
13 prepublication review.
14 Q. Could you describe, just in general
15 terms, what that process was like? What
16 happened?
17 MS. NORMAN: Objection to form.
18 A. Basically, she had to deliver -- she had
19 to deliver the manuscript to the publication
20 review board and then wait until they got back
21 with their comments of what they thought was
22 potentially classified.
23 Q. A lawyer was involved in that process of
24 submitting the book for review by the CIA?
25 A. I don't know if the lawyer was involved

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1 E. CHENEY
2 in the actual submission; no, I don't think,
3 no.
4 Q. Were you directly involved in that
5 process?
6 A. No.
7 Q. How did you learn about the process?
8 Through the author or --
9 A. The author says I have to show this to
10 the publication review board.
11 Q. So your information about that process
12 came through the author?
13 A. In that case, yes.
14 Q. In any other experience other than
15 dealing with No Easy Day, did you have an
16 experience dealing with a prepublication review
17 process?
18 A. No.
19 Q. Do you have any knowledge about the
20 prepublication review process before the
21 publication of No Easy Day?
22 A. Only for the CIA.
23 Q. Were you aware of any prepublication
24 review process for members of the military?
25 MS. NORMAN: Objection to form.

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1 E. CHENEY
2 A. Only for the CIA is what I was aware of;
3 I didn't know what the military situation was.
4 Q. You might have answered the question
5 already in connection with a different topic,
6 but other than Mr. Bissonnette, have you
7 represented any other military authors?
8 A. No.
9 Q. Is there anyone in your agency
10 representing any military authors other than
11 Mr. Bissonnette?
12 A. No.
13 Q. Have you represented any authors other
14 than Mr. Bissonnette who had signed
15 nondisclosure agreements?
16 MS. NORMAN: Objection to form.
17 A. I mean, like I said, no, not other than
18 what I'm saying for the CIA; I assume she
19 signed a nondisclosure agreement; I don't know
20 how they handle it.
21 Q. Now, I believe that in connection with
22 this case, you're designated as both a mixed
23 fact and expert witness. Are you aware of
24 that?
25 MS. NORMAN: Are you aware of

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1 E. CHENEY
2 that?
3 A. Yes.
4 Q. How are you aware of that? Who told you
5 that?
6 A. When I --
7 THE WITNESS: Did you get the --
8 MS. NORMAN: The form.
9 A. Yes, the form said I was a non-retained
10 fact witness and a non-retained person.
11 Q. Unfortunately, I only have one copy, but
12 I'll mark it.
13 A. Okay.
14 (Whereupon, Rule 26-A2 Expert
15 Disclosure was marked as Exhibit 135,
16 for identification, as of this date.)
17 Q. Ms. Cheney, I'm going to show you the
18 marked copy. This is Exhibit 135. Have you
19 seen this before?
20 A. Yes.
21 Q. Did you see it drafted before it was
22 finalized?
23 A. No.
24 Q. Did you work with anyone to amend or
25 change the text that begins on page 4, as it

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1 E. CHENEY
2 relates to you?
3 A. No, no.
4 MS. NORMAN: Just let him
5 finish.
6 A. Sorry.
7 Q. I understand. Did you approve this
8 language?
9 A. No.
10 Q. Well, I want to ask if you agree with
11 it; it states that on page 4, in the third
12 sentence of the first paragraph, that you
13 "represented plaintiff on both his books and
14 has represented numerous bestselling authors
15 and has first-hand experience with the income
16 authors receive from bestselling books; the
17 nature and patterns of the book sales, what
18 will increase or decrease book sales, the
19 process of marketing a bestselling book for a
20 movie, and the income authors receive when
21 bestselling books are optioned for and become
22 movies." Is it an accurate statement?
23 A. Yes.
24 Q. What bestselling book have you worked on
25 that became a movie?

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1 E. CHENEY
2 A. Well, I think just to specify, it says
3 the process of marketing a bestselling book for
4 a movie, so Fair Game became a movie; that was
5 Valerie Plame's book. I'm actually not sure if
6 it hit the bestseller list; I'm trying to
7 think, but generally what my job is, is the
8 marketing of the book to become a movie; I
9 think that's what he's trying to say here.
10 Q. Have you ever --
11 A. Which I've done several times.
12 Q. Have you ever had a book that you worked
13 on as a literary agent for the author become a
14 movie?
15 A. Valerie Plame's Fair Game.
16 Q. Any other book that you worked on that
17 has become a movie? Any others?
18 A. Concussion, that was just -- with Will
19 Smith.
20 Q. Who is the author of Concussion?
21 A. Jeanna Marie Laskas, L-A-S-K-A-S.
22 Q. When was that book written?
23 A. About a year and a half ago, I think.
24 Q. That was after No Easy Day; correct?
25 A. Yes.

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1 E. CHENEY
2 Q. Were there any books that you worked on
3 that became movies before your work on No Easy
4 Day?
5 A. Fair Game.
6 Q. And no others?
7 A. They didn't become movies, no.
8 Q. Other than Fair Game and Concussion,
9 have any books that you've worked on as a
10 literary agent become movies?
11 A. No.
12 Q. The second paragraph states that "you
13 may testify to the amounts of money that
14 plaintiff has lost as a result of book sales
15 that never occurred because of the actions of
16 defendants." Do you see that?
17 A. Yes.
18 Q. Do you agree with that?
19 MS. NORMAN: Objection. She
20 testified she didn't write this; this is
21 a legal document in the case; I don't
22 think she --
23 MR. FURMAN: I'm just asking if
24 she agrees that she --
25 A. Well, I wrote something --

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1 E. CHENEY
2 MR. FURMAN: -- could testify
3 to.
4 A. -- which I believe you have, which does
5 that.
6 Q. So you've thought about the income that
7 Mr. Bissonnette may have lost as a result of
8 book sales?
9 A. Yes.
10 Q. We have some document that you prepared
11 in contemplation of that issue?
12 A. Yes, I think you have -- I don't know
13 what you have; I just know that Randy has it,
14 and Elena has it; right?
15 Q. When did you prepare that document?
16 A. It would probably say on the document; I
17 think it's dated.
18 Q. I don't know what you're mentioning so
19 it's new to me, so I just want to explore what
20 you're referring to because I haven't seen it,
21 so can you give me your best estimate as to
22 when you prepared it?
23 A. Probably 2014.
24 Q. Is it a document that you have available
25 to you, if you need to look it up in your

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1 E. CHENEY
2 office?
3 MS. NORMAN: Do you have it in
4 your office?
5 A. Yes.
6 Q. What does the document consist of?
7 MS. NORMAN: You can answer. I
8 mean, just a minute; just answer
9 questions about the document, to the
10 best of your recollection.
11 A. Sorry; tell me the question again.
12 Q. I'm asking about the amount of money
13 that Mr. Bissonnette lost as a result of book
14 sales that never occurred because of the
15 actions that are claimed against my clients.
16 A. Right.
17 Q. You've testified that you have prepared
18 a document to that effect in 2014?
19 A. Yes, I believe it's '14.
20 Q. And I asked you if you have that
21 document and you said you do have it in your
22 office?
23 A. Yes.
24 Q. I'm going to make a request for the
25 production of that document, and we'll handle

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1 E. CHENEY
2 that request through your lawyer and
3 Mr. Johnston.
4 A. Sure.
5 Q. Could you describe for me what that
6 document says?
7 A. It gives an estimate of what potential
8 income losses were, in my professional
9 judgment, for Matt Bissonnette because of
10 Podlaski's failure to advise him of the proper
11 legal way in which he's supposed to pursue
12 publication of any books that he writes.
13 Q. What was it based on? Book sales only
14 or anything else?
15 A. It was based on potential book sales.
16 Other income, are you asking about? Is that
17 what you mean?
18 Q. I just want to know what's in your
19 document?
20 A. Oh, yeah. So it's based on research
21 that I did to determine what kind of sales the
22 book might have -- how many copies the book
23 might have sold, had it gone through the proper
24 channels, what potential film deals it might
25 have garnered, if it had gone through the

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1 E. CHENEY
2 proper channels, and what book sales resulted
3 in a potential movie that might have been made,
4 if it had gone through the proper channels.
5 Q. Can you tell me what that research was?
6 What did it consist of?
7 A. We have proprietary software called
8 Nielsen BookScan that tells us sales, track
9 records for other books similar to No Easy Day,
10 and I did -- I used that to determine
11 comparable sales for No Easy Day, had it gone
12 through the proper channels.
13 Q. Can you spell the name of that software?
14 A. Sure. Nielsen; like the TV, you know,
15 Nielsen does ratings for television,
16 N-I-E-L-S-E-N BookScan.
17 Q. What comparable books did you compare No
18 Easy Day to?
19 A. I believe, I know I compared it to
20 Marcus Luttrell's book; I actually don't
21 remember the name of his book right now. I
22 know that was one the books that I compared to;
23 there may have been a couple of others,
24 actually.
25 Q. Who is Marcus Luttrell?

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1 E. CHENEY
2 A. He was a Navy Seal.
3 Q. What did his book involve?
4 A. It was an expedition called Lone
5 Survivor; it was an expedition that he went on
6 in which, I think, most of the men were killed
7 on his expedition.
8 Q. Could you tell me --
9 A. He survived.
10 Q. Lone Survivor was a book of Mr. Luttrell
11 that ultimately became a movie?
12 A. Yes.
13 Q. You mentioned a couple of other books.
14 What books are those?
15 A. I'm actually not sure; I would have to
16 look at the document. I think I looked at --
17 I'm sure I looked at other military titles, but
18 I think in the document I mention maybe one or
19 two others.
20 Q. Can you tell me generally what this
21 Nielsen BookScan software does?
22 A. It gives you the sales track records,
23 which approximately is eighty percent of sales
24 of a book title since about 2001, so it's the
25 last fifteen -- sixteen years of book sales for

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1 E. CHENEY
2 every book published.
3 Q. How is the data in the Nielsen software,
4 how is that populated? Who provides the
5 information? Is it the Nielsen Company?
6 A. Yeah, I assume so. I mean, they get
7 sales tracks from Amazon; they get it from
8 Barnes & Noble; they get it from the
9 independent book sellers; they get it from
10 Costco. So all the major book sellers report
11 to Nielsen BookScan.
12 MR. FURMAN: Let's mark this
13 next document.
14 (Whereupon, Projected Sales were
15 marked as Exhibit 136, for
16 identification, as of this date.)
17 Q. Ms. Cheney, I'm going to show you what
18 was marked, and I'll show you the actual
19 exhibit, Exhibit 136. Do you know what this
20 is?
21 A. Yes.
22 Q. What is it?
23 A. It was projections that I put together
24 for potential -- actually, let me just see if
25 it was projections. I believe these are

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1 E. CHENEY
2 projections based on sales as to what -- let me
3 just see, hold on. Yeah, these are projected
4 sales for No Easy Day over a ten year period
5 that I prepared.
6 Q. When did you prepare this projection?
7 A. I'm actually not sure.
8 Q. Was it in the year 2013?
9 A. I don't know; I'm not sure the exact
10 date, but that's possible.
11 Q. Do you know whether you prepared it in
12 2016? 2015?
13 A. 2013 sounds very possible, like, a
14 reasonable guess.
15 Q. Who asked you to prepare it?
16 A. That's what I'm trying to remember, to
17 be honest; I'm not sure if it was Bob Luskin or
18 -- I think it was Bob Luskin, but I'm not
19 positive, to be honest. I really don't know.
20 Q. Do you know why Mr. Luskin asked you to
21 prepare it?
22 A. No, I don't remember.
23 Q. Was it prepared in connection with a
24 lawsuit against Mr. Podlaski?
25 A. I'm really not sure.

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1 E. CHENEY
2 Q. Do you know why --
3 A. It makes sense what you're saying.
4 Q. I'm asking specifics questions. Why did
5 you prepare this?
6 A. Oh, here, 2014. Hold on. Because we
7 were looking at what's the potential sales of
8 No Easy Day over a ten-year period, so it had
9 to do with something -- to do with what losses
10 Matt might have had; I think it's Luskin, but
11 I'm not sure.
12 Q. You testified earlier about using the
13 Nielsen BookScan; is this the same projection
14 that you were describing earlier?
15 A. You mean is this sheet different than
16 the other one? Is that what you're asking? Is
17 this the same software?
18 Q. Let me rephrase the question and I'll
19 start again. Before I showed you Exhibit 136,
20 I was asking you about the projections, and you
21 had testified that you had done one in
22 accordance with something called the Nielsen
23 Rating BookScan?
24 A. Right, that was one piece of the
25 research that I use to project the income.

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1 E. CHENEY
2 Q. Is that research reflected in the
3 document that's before you, Document 136?
4 A. I think it was for a separate document,
5 to be honest, but clearly, since I'm referring
6 to Nielsen BookScan here I use as well, that's
7 the first place I would go besides talking to
8 publishers about their thoughts, but yeah,
9 yeah.
10 Q. Earlier when I had mentioned that I
11 would be calling for the production of the
12 document --
13 A. Yeah.
14 Q. -- that I had not seen, that is
15 something different than what is in front of
16 you?
17 A. Yeah.
18 MR. JOHNSTON: Object to the
19 form of the question.
20 Q. What I'm getting at is, there's another
21 document out there that contains your research
22 and has your comparison to Marcus Luttrell's
23 book and some other books?
24 A. Yes, I mean this was done at a different
25 time and so it's possible that these numbers

<p style="text-align: right;">Page 69</p> <p>1 E. CHENEY</p> <p>2 are different than the numbers on this other</p> <p>3 document because sales -- because I would have</p> <p>4 more information later on.</p> <p>5 Q. So I'm repeating myself, but I had asked</p> <p>6 for the production of the other document?</p> <p>7 A. Yes.</p> <p>8 Q. I'm struggling to define it, but I would</p> <p>9 define it as the comparison of future book</p> <p>10 sales based on Marcus Luttrell's book and other</p> <p>11 books; I'm calling for the production of that</p> <p>12 particular document; I'll deal with it through</p> <p>13 the lawyers.</p> <p>14 A. Right.</p> <p>15 Q. Just so I'm clear, it is separate from</p> <p>16 Document 136?</p> <p>17 A. Separate, yes.</p> <p>18 Q. In general terms, what is Document 136</p> <p>19 telling me or trying to tell me?</p> <p>20 MS. NORMAN: Objection to form.</p> <p>21 A. Different scenarios -- and what Matt's</p> <p>22 profits would have been based on -- different</p> <p>23 sales scenarios.</p> <p>24 Q. Where are the different sale scenarios</p> <p>25 listed?</p>	<p style="text-align: right;">Page 71</p> <p>1 E. CHENEY</p> <p>2 price of the book, \$26.95?</p> <p>3 A. What it looks to me like is -- you know</p> <p>4 what? Let me look at this; I need to go</p> <p>5 through this again because I haven't seen this</p> <p>6 in a while, so I see it -- to go through this</p> <p>7 again to see what I was really doing here.</p> <p>8 Q. Let's put that down for the moment; I'll</p> <p>9 come back to it; just so we can keep moving.</p> <p>10 A. I need to look at it more carefully.</p> <p>11 Q. That's fair enough. So we'll get back</p> <p>12 to that.</p> <p>13 A. Sure.</p> <p>14 MS. NORMAN: Can I confer with</p> <p>15 Mr. Johnston for a second? This will</p> <p>16 take two minutes.</p> <p>17 MR. FURMAN: Sure. We'll mark</p> <p>18 this.</p> <p>19 (Whereupon, Document Subpoena</p> <p>20 was marked as Exhibit 137, for</p> <p>21 identification, as of this date.)</p> <p>22 MR. JOHNSTON: Let me say on the</p> <p>23 record, I think -- well, I think the</p> <p>24 document Mr. Furman is requesting -- is</p> <p>25 questioning Ms. Cheney about is a</p>
<p style="text-align: right;">Page 70</p> <p>1 E. CHENEY</p> <p>2 A. Well, net to author No. 1; net to author</p> <p>3 No. 2; net to author No. 3; net to author No.</p> <p>4 4; those are all different sales patterns.</p> <p>5 Q. Where can I find information about those</p> <p>6 specific patterns that you used to calculate</p> <p>7 the numbers that are set forth there?</p> <p>8 A. I don't understand the question.</p> <p>9 Q. I'll break it down. At the very top of</p> <p>10 the document, there's something called SRP?</p> <p>11 A. Right.</p> <p>12 Q. What does that mean?</p> <p>13 A. I'm trying to remember. Sales -- I</p> <p>14 don't know; I don't remember what that's</p> <p>15 supposed to be, but what it is, is what -- so</p> <p>16 in other words, SRP the price of the book of No</p> <p>17 Easy Day was \$26.95; right? If you go to</p> <p>18 price. Net to author, so this would be based</p> <p>19 on one -- if the book had netted -- had gotten</p> <p>20 \$4 million in sales -- oh, I know; I'm</p> <p>21 explaining -- this is the retail price, SRP,</p> <p>22 \$26.95 and then what the net to -- I think I</p> <p>23 need a calculator, but --</p> <p>24 Q. For example, I asked you what SRP meant</p> <p>25 and you mentioned that looks to be the retail</p>	<p style="text-align: right;">Page 72</p> <p>1 E. CHENEY</p> <p>2 document that she assisted us in the</p> <p>3 preparation for purposes of damage</p> <p>4 calculations that document, which I know</p> <p>5 exists, was attached as Exhibit 5 to a</p> <p>6 settlement offer that was sent to the</p> <p>7 defendants before suit was ever filed</p> <p>8 and has been in the possession of</p> <p>9 defendants and their counsel since</p> <p>10 before November of 2014. Now, in</p> <p>11 fairness, the counsel for the defendants</p> <p>12 at that time was not Mr. Furman, it was</p> <p>13 another law firm. I'm checking on</p> <p>14 whether that document was produced a</p> <p>15 second time as a part of disclosures.</p> <p>16 I'm not sure of that; I'll know shortly,</p> <p>17 but I know it was sent to the defendants</p> <p>18 with that letter, and I'm happy to</p> <p>19 produce it again; we'll be happy to do</p> <p>20 so.</p> <p>21 MR. FURMAN: Elena, is there</p> <p>22 anything you wanted to put on the</p> <p>23 record?</p> <p>24 MS. NORMAN: No, I just wanted</p> <p>25 to make it clear that my understanding</p>

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1 E. CHENEY
2 is that counsel for Mr. Podlaski has the
3 document that Ms. Cheney is talking
4 about.
5 MR. FURMAN: I hate cluttering
6 the record this way. The only response,
7 it doesn't require a response in return,
8 is that I can only deal with in
9 litigation, the documents that are
10 produced pursuant to demands or
11 subpoena. I don't believe that the
12 document that I'm requesting was
13 produced pursuant to a demand for
14 production of documents or a subpoena.
15 For that reason, I'm calling for the
16 production of it, and we'll reserve the
17 right to question Ms. Cheney further on
18 it, if necessary. I don't know that,
19 and I'm just reserving the right to do
20 so. I understand all the objections to
21 them.
22 MR. JOHNSTON: Let me just say,
23 they have e-mailed it to me; I will try
24 to figure out a way to get it from my
25 phone into Ms. Lemkhen's phone in the

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1 E. CHENEY
2 next few minutes.
3 MR. FURMAN: I mean, having it
4 on the phone while I'm questioning the
5 witness and not having an opportunity to
6 read and prepare for the questioning is
7 not something I would want to do to
8 another lawyer.
9 MS. NORMAN: Look, look, look,
10 here's what we're going to do. We're
11 going to produce it to you at the
12 beginning of the lunch break. You can
13 look at it, and you can ask Ms. Cheney
14 any questions about it that you want
15 today, but the deposition is not going
16 to be continued based on that document.
17 MR. FURMAN: Thank you. I
18 understand.
19 MS. NORMAN: Please don't cut me
20 off. I'm entitled to speak on the
21 record, as are you. The deposition is
22 not going to be continued based on
23 whether or not you knew you had that
24 document coming here today. Will you
25 agree to that? If you won't, then

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1 E. CHENEY
2 there's no reason for me to produce it
3 to you at lunch.
4 MR. FURMAN: I'm not going to
5 agree to it; I don't even know what it
6 is; I'm sorry. I'm going to ask
7 questions and I'll continue. I really
8 don't want lawyer talk part of the
9 record.
10 MS. NORMAN: Lawyer talk is as
11 much part of the record as your
12 questions to the witness; you know that.
13 MR. FURMAN: Thank you very
14 much.
15 MS. NORMAN: So look, what I'm
16 telling you is, in my mind, it's your
17 obligation to look at every document you
18 have and to make your deposition outline
19 and if you didn't see something that's
20 not something that is an issue of our
21 creating; however, in order to try to
22 streamline this, we're happy to give you
23 the document at the beginning of the
24 lunch break; we'll even print it out for
25 you, and you can ask whatever questions

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1 E. CHENEY
2 you want.
3 MR. FURMAN: Thank you.
4 Q. Ms. Cheney, I'll show you what's been
5 marked as Exhibit 137. Do you recall receiving
6 that document?
7 A. Yes.
8 Q. When did you receive it?
9 A. I don't know.
10 Q. When did you receive it?
11 A. I said, I don't know.
12 Q. Sorry. What did you do in reaction to
13 receiving it?
14 A. Whatever I was supposed to do; I don't
15 know.
16 Q. Well, I wouldn't know unless you tell
17 me.
18 A. Honestly, what it's requiring me to --
19 subpoena for all documents -- I sent the
20 documents, I assume, to whoever I was supposed
21 to send them to.
22 Q. Can you describe for me the process by
23 which you collected documents in response to
24 the subpoena?
25 A. Sure. I had a folder; I took the

ELYSE FAITH CHENEY
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1 E. CHENEY
 2 folder, I think I sent them to Randy; right,
 3 and then whatever, you know, notes I had in
 4 that folder, and then I went through all my
 5 e-mails, printed them. I believe I sent that
 6 to Randy, and also sent -- forwarded whatever
 7 e-mails I had that involved Podlaski.
 8 Q. The folder you described, where was it
 9 kept first? Let me ask you that.
 10 A. In my office.
 11 Q. How is it segregated from other
 12 documents?
 13 A. It just said "Mark Owen" and things get
 14 shoved in there, basically; I'm not the most
 15 organized.
 16 Q. So everything that's paper related to
 17 Mr. Bissonnette would have been in that folder?
 18 A. Primarily, but then the actual contract
 19 with the publisher, we put that into a separate
 20 folder and, like, if a check comes in we put
 21 that in a separate folder, and we do a Xerox of
 22 the check.
 23 MS. NORMAN: I don't think they
 24 say Xerox anymore.
 25 A. Or whatever; I don't do the Xeroxing, if

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1 E. CHENEY
 2 it -- the copying, and then we have a money
 3 processing thing that gets sent.
 4 Q. You took that entire folder and you sent
 5 it over to Mr. Johnston?
 6 A. I think so.
 7 Q. Did you have it copied, or was it the
 8 original that you sent over?
 9 A. I think he could probably answer that
 10 better than I could. I don't know, actually
 11 Q. Well, I just want to know how you gave
 12 it to Mr. Johnston?
 13 A. I either copied it -- I think I probably
 14 copied it; I kept the copy for myself and sent
 15 him the actual, but I'm not sure.
 16 Q. Did you review the documents in that
 17 folder before you sent it over to Mr. Johnston?
 18 A. I mean, I looked at it, but I basically
 19 just took the whole thing and sent it.
 20 Q. How big or small was it? Physically
 21 describe it for me?
 22 A. It was, like, this thick (indicating),
 23 maybe, like, an inch and a half.
 24 Q. Consisting of paper, I take it?
 25 A. Yes, paper.

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1 E. CHENEY
 2 Q. Now, the e-mails, how do you organize
 3 your e-mails in your office? Are they on
 4 Outlook?
 5 A. Yes.
 6 Q. Do you organize them by author?
 7 A. I have a list of file folders for the
 8 author; however, I never move them into the
 9 file so, although -- I think I set up an
 10 automatic thing where they generally go into
 11 the file, so yeah, I just keep them all -- I
 12 have them all, so if I'm looking for something,
 13 I just put in Mark Owen, then they all come up.
 14 I also have a side folder, which probably has
 15 most of them.
 16 Q. Do you have a network at the office, or
 17 does everyone have a PC?
 18 A. We each have our own PCs, yeah, personal
 19 computers.
 20 Q. Are all the agents connected by a
 21 specific network?
 22 A. We had a server; now, I think we use the
 23 Cloud.
 24 Q. The filing system that you would use,
 25 and you had mentioned sometimes that you don't

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1 E. CHENEY
 2 use it, is that a Microsoft Word filing system?
 3 A. No, no, on an e-mail.
 4 MS. NORMAN: Objection to form.
 5 Misstates the witness's testimony; you
 6 can answer the question.
 7 A. When I use a file; it's a file on the
 8 e-mail that, you know -- so if an e-mail comes
 9 in, I think it should route -- if it has his
 10 name on it, route to his e-mail file, if that's
 11 what you're referring to.
 12 Q. No, what I'm asking is, do you have a
 13 specific software that is a document retention
 14 software?
 15 A. Oh, yes, yes.
 16 Q. What's it called?
 17 A. I think it's Outlook or Microsoft Word,
 18 yeah.
 19 Q. Did you create a separate folder for
 20 Mark Owen/Matt Bissonnette?
 21 A. Yes.
 22 MS. NORMAN: So, as I mentioned
 23 before, I have a call at noon and it is
 24 a five to 12:00. Could we break after
 25 one or two more questions on this?

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1 E. CHENEY
2 MR. FURMAN: Sure.
3 Q. The e-mails that relate to
4 Mr. Bissonnette, can you describe how you
5 searched for them?
6 A. I put in Mark Owen and then it comes --
7 every e-mail that comes under the Mark Owen
8 e-mail, comes up; I mean how else do you
9 search?
10 Q. Well, what I'm asking for is, how did
11 you organize the e-mails so that you then could
12 produce them to Mr. Johnston?
13 A. I put in all of Matt's e-mails and they
14 came up and then we printed all of them and I
15 also forwarded them to him, you know, I think
16 -- let me just look at what else they're
17 supposed to do. So then, I would of put in
18 similarly any -- Ben Sevier from Penguin,
19 e-mails from him, if they related to Matt; I
20 would of done the same thing, but put Ben
21 Sevier's name into Microsoft -- I mean, to the
22 e-mail, search, forward, print.
23 Q. I think your counsel needs to take a
24 break. I want to continue to ask some
25 questions about this process, and we'll take a

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1 E. CHENEY
2 break now.
3 A. Sure.
4 MR. FURMAN: How much time do
5 you need?
6 MS. NORMAN: Well, did you want
7 a lunch break or do you want to keep
8 working?
9 MR. FURMAN: I would like to
10 keep working.
11 MS. NORMAN: Do you not want to
12 have a lunch break at all? All I'm
13 saying, to the extent that we're going
14 to have one anyway, it makes sense to do
15 one now because I have to take a break.
16 So the witness may want to eat lunch
17 today. I think that if people are going
18 to eat, it should happen now.
19 MR. FURMAN: That's fine; I'd
20 like to just keep it short.
21 MS. NORMAN: I'm thinking maybe
22 -- I have a call for twenty minutes or
23 something, so why don't you just bring
24 the sandwiches from the other room in
25 here.

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1 E. CHENEY
2 MR. FURMAN: Can we reconvene at
3 12:30?
4 MS. NORMAN: I can't guarantee
5 what time my call is going to be over;
6 I'll do the best I can.
7 MR. FURMAN: We spent a lot of
8 time dealing with things that don't
9 relate to getting testimony from the
10 witness. I'm concerned about the time
11 that we're losing so I would like to
12 start it as promptly as possible.
13 MS. NORMAN: I would, too, and
14 as I told you first thing when we
15 started this morning, and you guys were
16 late, by the way.
17 MR. FURMAN: We were late by, I
18 think, maybe eight minutes.
19 MS. NORMAN: Right, but you were
20 late and so I told you first thing that
21 I needed to break at 12:00, and I'm
22 going to.
23 MR. FURMAN: That's fair enough.
24 If I do a word count, I can almost
25 guarantee that most of the words are

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1 E. CHENEY
2 coming from you and not the witness, and
3 that bothers me.
4 MS. NORMAN: So what? So what?
5 I'm entitled to make a record. I mean,
6 that's irrelevant and you might not like
7 it.
8 MR. FURMAN: I don't like it.
9 You've done a very good job of getting
10 under my skin, so I salute you for that.
11 MS. NORMAN: Good, good.
12 MR. FURMAN: It happens very
13 rarely.
14 MS. NORMAN: I don't do it
15 deliberately, but foremost, I would like
16 a record that is accurate and that can
17 be used in the ways that it can be used.
18 MR. FURMAN: Kudos for you.
19 MR. JOHNSTON: Let me confirm,
20 on the record, that I have sent to
21 Izabell, via e-mail, a memo on Elyse
22 Cheney Literary Associates letterhead to
23 me, dated September 17, 2014, that was
24 attached as Exhibit 5 to the settlement
25 offer that was sent to Mr. Shannon, who

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1 E. CHENEY
2 was counsel at that time; we can print
3 out a copy of that, somehow here I'm
4 sure. Right now, all you have is that
5 electronic copy of the document.
6 MR. FURMAN: Fair enough. I
7 would say that, Randy, just so the
8 record is clear, this, unless I'm wrong,
9 wasn't produced in response to
10 discovery. I've only prepared for Ms.
11 Cheney's testimony today, in response to
12 documents that were produced in
13 discovery. I asked for, in my document
14 demands, Ms. Cheney's work product and
15 anything that relates to profits or
16 anything that she would testify to. I
17 would naturally expect to give you the
18 opportunity to prepare adequately. I
19 know that you would obviously give me
20 that opportunity.
21 MR. JOHNSTON: Absolutely.
22 MR. FURMAN: So all I'm saying
23 is that I'm now seeing a document that
24 relates to Ms. Cheney's potential
25 testimony for the first time, so I'm

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1 E. CHENEY
2 going to reserve the right to ask the
3 court for more time with Ms. Cheney;
4 that's all I can do.
5 MR. JOHNSTON: So that the
6 record is clear, I'm having my office
7 check to see if the document was
8 produced as part of our document
9 production. You may be right that we
10 inadvertently did not produce it and,
11 for which, my profound apologies. I
12 absolutely recognize your right to
13 question the witness on a document and
14 the preparation issue, I understand. I
15 will tell you, to my knowledge, and I
16 would ask you to confirm this during the
17 break, the damages described in that
18 letter are not even damages we are
19 currently seeking, so I don't know that
20 it matters, but -- and that may be why
21 it didn't get produced. I'll ask
22 Robert. I understand you reserving your
23 rights; you're absolutely on firm ground
24 in doing so. I don't think it matters
25 to either one of us, but you now have

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1 E. CHENEY
2 the document; you can look at it and
3 decide.
4 MR. FURMAN: We'll let the
5 reporter rest. We created a molehill
6 out of an ant.
7 MS. NORMAN: Since I do not want
8 to be a part of the word count; I'll now
9 stop.
10 (Whereupon, a recess was taken
11 at this time.)
12 MR. JOHNSTON: I received
13 confirmation from my partner, Robert
14 Toby, that Mr. Furman is correct, that
15 the September 2014 document of Ms.
16 Cheney was not produced in the document
17 production. Without arguing his
18 reasoning, he said he did not think it
19 was within the scope of the subpoena for
20 her file, in part, because it was
21 produced in contemplation of litigation
22 and not, therefore, business records and
23 could not qualify as a business record
24 and was prepared as part of a settlement
25 demand, whether he's right or wrong

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1 E. CHENEY
2 about that. We have produced the
3 document to Mr. Furman and Ms. Lemkhen
4 at this time electronically and the hard
5 copies and recognize Mr. Furman had
6 limited time to review it. I will
7 further, say my belief is and thanks to
8 the loss of my iPad, I can't confirm it,
9 but my belief is that the expert report,
10 submitted in accordance with our expert
11 deadline from Mr. Slottje, does not
12 incorporate or rely on Ms. Cheney's
13 opinions any way, and I think that's all
14 I have to say about the document.
15 THE WITNESS: Can I talk?
16 MS. NORMAN: Yes.
17 A. This Document 136 that you gave me, I
18 now understand it because it was given to me
19 and stapled in the wrong order which, I think,
20 you would have known; I don't know cause it
21 would have printed out that way so I'm not sure
22 why it was given to me in an order that would
23 make it confusing. Again, it was produced for
24 Lusk.
25 MS. NORMAN: Prepared for

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1 E. CHENEY
2 Luskin.
3 A. It was prepared for Luskin, yeah, and it
4 shows my projections from the publication from
5 2012 -- the end of 2012 to -- for a ten year
6 period as to what No Easy Day, I believe, might
7 have sold or might sell.
8 Q. The way it was stapled was the way that
9 we received it.
10 A. Okay.
11 Q. I just want to explain to you why you
12 were handed the document in the fashion, the
13 way it was presented to you.
14 A. Do you want me to give you the right
15 order?
16 Q. Would you mind? I think it may be
17 easier for us to follow along.
18 A. Sure. So the first page says, No Easy
19 Day Projected Income Report.
20 MS. NORMAN: So that's the one
21 that is now the last page?
22 A. Yes, that's page 1. You'll see it takes
23 you through page 1 -- that's not the first page
24 -- sorry; that is the first page sorry; I
25 couldn't see it from here. So that's page 1;

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1 E. CHENEY
2 that takes what projected potential sales are
3 in year one and year two and then page 2 goes
4 on and says, "year three," "year four," "year
5 five." Page 3 is years six to ten. Now, the
6 next part basically starts with the numbers;
7 SRP is Suggested Retail Price.
8 Q. Okay.
9 A. Net is what a publisher would take home,
10 so suggested retail price of the book price is
11 \$26.95.
12 MS. NORMAN: Have you already
13 finished saying how --
14 A. How they're organized. The first page
15 has a \$4,600,011 number on it, and I believe
16 then it would go -- the second page would look
17 just, like, starting with the \$4,000,000, but
18 this one starts at \$150,000.
19 Q. I see it.
20 A. Then the last pages here of the
21 different scenarios.
22 Q. \$150,000?
23 A. Yeah.
24 Q. Great, so now I have the order. What
25 information did you use to base these

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1 E. CHENEY
2 projections on?
3 A. BookScan and most likely a conversation
4 with the publisher as well.
5 Q. Did the publisher send you information
6 that you then would have entered into the
7 Nielsen BookScan?
8 A. No, it would have been communicated
9 verbally.
10 Q. The person that gave you this
11 information was Ben Sevier?
12 A. Yeah, but this was based mostly on
13 BookScan largely, but I might have vetted some
14 of it with Ben Sevier.
15 Q. I want to get back to that and also the
16 document that Mr. Johnston referred to; we'll
17 put that aside for now, and we'll get back to
18 it.
19 A. Sure.
20 MS. NORMAN: Just for the record
21 to be clear, when you say the document
22 that Mr. Johnston referred to before the
23 break, we were talking about a report
24 that Elyse Cheney was talking about that
25 she remembers having prepared some

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1 E. CHENEY
2 calculations.
3 MR. FURMAN: That's the document
4 we're talking about.
5 MS. NORMAN: Right, so I just
6 wanted to make it clear that you now
7 have it.
8 MR. FURMAN: Yes, I have it.
9 Q. Going back to the production of
10 documents. Before the break, you mentioned
11 that you did a search of your e-mails that
12 involve Mr. Bissonnette?
13 A. Mm-hmm.
14 Q. Did you have e-mail exchanges with
15 Mr. Podlaski as well during the course of the
16 year that Mr. Podlaski was involved?
17 A. Yes.
18 Q. Did you also retrieve those and produce
19 them to Mr. Johnston?
20 A. Yes, I retrieved everything connected to
21 this case and sent them to Randy.
22 Q. Did you have e-mail exchanges with
23 Mr. Luskin that did not involve Mr. Podlaski?
24 MS. NORMAN: Object to form.
25 A. I assume so; I don't know if -- yeah,

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1 E. CHENEY
2 yeah -- yes, I would have e-mails with just
3 Luskin and not with Podlaski.
4 Q. Did you produce those to Mr. Johnston?
5 A. Yes, anything in connection to the case,
6 I did my best effort to produce.
7 Q. What I'm looking for is any
8 correspondence you had with Mr. Luskin and
9 others that did not involve Mr. Podlaski. When
10 I say involved, including him on the e-mail
11 from August 30th of 2012, up and through, say,
12 December of 2012?
13 A. If I thought that's what I was supposed
14 to do it, then I did it.
15 Q. I'll leave a space in the record; I'll
16 deal with this, or I'll make a request for this
17 at the end of the transcript and deal with your
18 lawyer on this issue, but I would call for the
19 production of any e-mail exchanges you had with
20 Mr. Luskin from August 30th of 2012 through
21 December 31st of 2012. I'll include in that
22 request any communication you had with
23 Mr. Luskin that related to the book, No Easy
24 Day, and what we could just --
25 A. Sure.

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1 E. CHENEY
2 MS. NORMAN: Just to make sure
3 we understand the basis of your request.
4 What is your basis -- I don't know if
5 those already have been produced or not.
6 Based on the testimony, it sounds like
7 they would have been produced, but can
8 you articulate for the record what the
9 basis of your entitlement to those is.
10 MR. FURMAN: Sure. The reason
11 is that we've had a court order that
12 permits us to have discovery that
13 relates to Mr. Luskin from August 30th,
14 and I believe it is at some point in
15 December. I don't know if it's
16 December 31st; it might be some other
17 date in December of 2012 that relates to
18 defenses in this case; these are part of
19 the court order, and I would be happy to
20 send you a copy of the court order.
21 MS. NORMAN: So it's August 2012
22 through September 2012?
23 MR. FURMAN: No, it would be
24 August 30th of 2012 up and through some
25 period of time in December of 2012. I

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1 E. CHENEY
2 don't know if it's the 31st or somewhere
3 before that. I know it's the month of
4 December.
5 MR. JOHNSTON: I will notify you
6 both if there were any e-mails withheld,
7 based upon the claim of attorney client
8 privilege, which the court has since
9 said is waived as of that date so that
10 you'll know if they were withheld.
11 MR. FURMAN: Understand.
12 MS. NORMAN: Just for the
13 record, this isn't a witness issue in
14 the sense that before the witness
15 retained her own counsel, Mr. Johnston
16 and his firm were handling document
17 production on behalf of the witness; she
18 gave as she testified; my understanding
19 is she provided to Mr. Johnston
20 everything she had that, in any way,
21 related to No Easy Day. They then made
22 the decision about what to produce and
23 what to withhold based on privilege and
24 whatever, so your follow-up request, as
25 Mr. Johnston noted, is probably an issue

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1 E. CHENEY
2 for Bissonnette's counsel as opposed to
3 Ms. Cheney herself.
4 Q. How did you first learn about
5 Mr. Bissonnette?
6 A. Someone I knew called me and said there
7 was a guy who was on the raid who was trying to
8 decide what he would be doing going forward,
9 and would I like to meet him.
10 Q. Who was that person that you knew?
11 A. Kevin Vance was his name.
12 Q. Who is Kevin Vance?
13 A. He's a Delta Force guy, yeah.
14 Q. How do you know him?
15 A. He was introduced to me several years
16 prior by a video game designer, and he was
17 interested in putting together a video game and
18 potentially making that into -- using that
19 story for a book, so that's how.
20 Q. Kevin Vance, do you know him? Do you
21 know whether or not he was a Navy Seal?
22 A. I'm not sure; I'm pretty sure he was
23 Delta Force.
24 Q. Do you know how Mr. Bissonnette came
25 into contact with Mr. Vance?

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1 E. CHENEY
2 A. I assume it's just a common community of
3 people.
4 Q. Other than that assumption, you don't
5 know how they got together?
6 A. No.
7 Q. Do you know whether it could have been
8 through this video game concept?
9 A. No, it wasn't; that was way before --
10 years before anything to do with Matt.
11 Q. What did Mr. Vance tell you?
12 MS. NORMAN: Objection to form.
13 Go ahead.
14 A. He said that there was a guy who was on
15 the raid and was considering his options; would
16 I like to meet him?
17 Q. What did you tell Mr. Vance?
18 A. Sure.
19 Q. What happened next?
20 A. What happened next is I did some
21 research; I called -- I happened to talk to Ben
22 Sevier and said, "there's a guy from the raid
23 coming to my office, what do you know about
24 this?" This is something of interest and he --
25 his interest was peaked, and I said, "I don't

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1 E. CHENEY
2 know anything about this world; tell me
3 something about it," and then he just happened
4 to call -- I just happened to be on phone with
5 him because he wanted to make a lunch date, and
6 then Matt came to my office and we had a
7 meeting.
8 Q. Matt came to your office in 78 5th
9 Avenue?
10 A. Yes, yes.
11 Q. Who arranged the meeting? Mr. Vance?
12 A. Vance must of gave Bissonnette my
13 e-mail. Bissonnette e-mailed me, and that's
14 how he came to my office.
15 Q. How long was that meeting? That first
16 meeting?
17 A. I think it was about two hours.
18 Q. Was it in December of 2011?
19 A. Yes, I think so.
20 Q. Was it before or after Christmas? Do
21 you know?
22 A. Before Christmas.
23 Q. Was it earlier in December or mid
24 December?
25 A. Probably mid.

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1 E. CHENEY
2 Q. Was it before or after Mr. Bissonnette
3 was dismissed by a superior from some kind of
4 training mission he was on?
5 A. I don't know what you're talking about.
6 Q. Were you aware that, around that time,
7 Mr. Bissonnette was on a training mission and
8 he was told to go home, and there was some
9 friction as a result of that?
10 MR. JOHNSTON: I object to the
11 form of the question.
12 A. No.
13 Q. So what I just mentioned, you've never
14 heard of before?
15 A. No.
16 Q. What did Mr. Bissonnette tell you when
17 he met with you?
18 MS. NORMAN: Objection to form.
19 A. I asked him what a Navy Seal was; what
20 -- tell me about that world; how long have you
21 been in it; how did he get to be on the raid;
22 what was his role in the raid; just tell me his
23 story, you know.
24 Q. Did you make any efforts to determine
25 whether he was telling the truth or not? If he

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1 E. CHENEY
2 was the real deal, in other words?
3 A. Well, in asking specific questions and
4 you're trying to evaluate the person just based
5 on your judgment, that's an attempt to figure
6 out whether he's telling the truth or not.
7 Q. Did Mr. Bissonnette show you any
8 artifacts or anything from the raid to confirm
9 that he actually had been on the raid itself?
10 A. I'm not sure if it was in that meeting,
11 but he had told Kevin, and I believe he told
12 me, that he had a hat from the raid.
13 Q. The Kevin you just referred to --
14 A. He may have brought it, but I don't
15 actually remember -- Kevin Vance.
16 Q. So, again, Kevin Vance told you when he
17 contacted you that --
18 A. He said, "I think he may have a hat from
19 the raid."
20 Q. When Mr. Bissonnette met with you in New
21 York in December of 2011, that may have been
22 the time that he showed you the hat that he
23 got?
24 A. May have; may have; I'm actually not
25 sure.

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1 E. CHENEY

2 Q. Just so it's clear --

3 A. He may not.

4 Q. When we refer to the hat, and we'll just

5 have to be a little better in the afternoon now

6 -- speaking one at time.

7 A. Sorry.

8 Q. That we're referring to the hat that bin

9 Laden had worn when he was killed in the raid?

10 A. I don't know that he was wearing the

11 hat, but it was billed as bin Laden's hat.

12 Q. When you met with Mr. Bissonnette, did

13 he express to you that he was concerned about

14 his identity being known?

15 A. Well, we weren't really talking about --

16 he was not even sure whether he wanted to do a

17 book or not, so I don't even know if it got to

18 the point; it was too premature.

19 Q. Did he mention that he wanted to not

20 reveal his name or his details?

21 A. Certainly, as soon as the book was being

22 contemplated, he said he did not want to reveal

23 his name.

24 Q. When he first met with you in December

25 2011, did he use his actual name?

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1 E. CHENEY

2 A. Yes.

3 Q. Did you discuss with Mr. Bissonnette

4 during that meeting any secrecy or other

5 requirements regarding confidentiality attached

6 to his work as a Navy Seal?

7 A. I'm sure I did; I'm sure I would have

8 asked him that, but I don't recall specifics;

9 I'm sure I would of said, can -- I don't know

10 how much you can say about what you did, but I

11 don't -- honestly, it was five years ago.

12 Q. Do you recall what he might have said

13 about that topic about the secrecy or

14 confidentiality attached to the raid?

15 A. I believe -- I don't know if he said

16 this at the time of that meeting or not, but he

17 expressed to me at some point shortly

18 thereafter that he -- there were certain things

19 about the raid that he was not allowed to speak

20 about -- that he had signed an agreement about.

21 Q. He told you about that, at that point in

22 time, at that meeting?

23 A. I'm not sure if it was at that meeting

24 or not. He said there was not a

25 confidentiality -- a separate confidentiality

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1 E. CHENEY

2 agreement for that raid; he was not allowed to

3 talk about locations and he was not allowed to

4 talk about certain technologies; that he signed

5 something to do with that.

6 Q. Do you recall the context in which he

7 told you that? Was it, in other words, in

8 response to a question of yours or a question

9 by a third person?

10 A. A third person? No, it was just me and

11 him in the meeting.

12 Q. Do you know why that topic came up?

13 A. I mean, I'm sure that I would have

14 asked, you know, what can you say and what

15 can't you say.

16 Q. That's when you --

17 A. His memory was that he had signed a

18 document and he was not allowed to talk about

19 technology -- certain technologies, and he was

20 not allowed to talk about location. Further,

21 he -- Leon Panetta had introduced him and, I

22 believe, a couple of other Seals to Kathryn

23 Bigelow, who was working on a movie about the

24 raid at the time, and they had -- Panetta had

25 allowed them to talk about to sort of consult

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1 E. CHENEY

2 on that movie to help her, I guess, have some,

3 you know, verse to the film, so clearly it

4 seemed like if he was talking to her and

5 Panetta had introduced him to her, then why

6 wouldn't he also be able to talk to me and

7 other Navy Seals who were also working on that

8 film, which also did go to the point of, was he

9 on the raid or was he not on the raid. Well,

10 if Panetta has introduced him to Bigelow, I

11 don't know; I doubt he's a fake, so --

12 Q. Did he separately speak to either

13 Kathryn Bigelow or Mark Boal or anyone that

14 works for them?

15 A. Yes, I spoke to Boal briefly.

16 Q. What did you talk to Boal about?

17 A. I spoke -- what I remember talking to

18 Boal about was that Boal -- after the book was

19 sold, Boal wanted Matt to do publicity, I

20 believe, for the movie and Matt did not want to

21 be involved in that at all and Boal then -- he

22 just was pressuring Matt to, sort of, be

23 involved -- to have Matt continue to be

24 involved in the movie, and Matt did not want

25 any involvement in that.

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1 E. CHENEY
2 Q. Did you represent Matt in any capacity
3 in respect to Zero Dark Thirty?
4 A. No.
5 Q. In any relation to Zero Dark Thirty?
6 A. No.
7 MR. FURMAN: Mark the next
8 exhibit.
9 (Whereupon, December 22nd E-mail
10 Exchange was marked as Exhibit 138, for
11 identification, as of this date.)
12 Q. Ms. Cheney, you mentioned there was a
13 detail that you wanted to add to your prior
14 answer?
15 A. Yeah, I believe that Kathryn Bigelow is
16 the one who suggested to Matt that he do a
17 book. And what I remember also about the
18 meeting was that he wanted to know that if he
19 did a book, what would that involve; what kind
20 of money would that potentially bring; that
21 kind of thing.
22 Q. What did you tell them?
23 A. I think I said, I really don't know,
24 honestly, but I, sort of, remember saying
25 something about \$500,000; suggesting it could

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1 E. CHENEY
2 be \$500,000.
3 Q. Was the fact that Mr. Bissonnette was
4 actually on the ground in that historic raid,
5 was that a significant factor in the interest
6 in the book?
7 A. Yes.
8 Q. Was it also a significant factor that he
9 would have been one the first ones to tell that
10 story from the ground?
11 A. That if -- if there had been another
12 Navy Seal who told the story before him, who
13 was on the raid, that probably would have been
14 an issue, yeah.
15 Q. It would have been an issue because --
16 A. I mean that it would have detracted
17 from, potentially, sales of Bissonnette's book.
18 Q. So being the first to tell the story is
19 important; fair to say?
20 A. No, I would say very carefully that the
21 point is -- what was most important was that it
22 was a first-hand account, so if somebody else
23 who was right next to him gave that first-hand
24 account, there would be too much similarity
25 there; that was the key.

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1 E. CHENEY
2 Q. Earlier in the year, there was a story
3 in the New Yorker which was quite famous.
4 A. Right; right.
5 Q. Written by Nicholas Schmittle,
6 S-C-H-M-I-D-D-L-E, that was a very detailed
7 narrative of the raid in Pakistan that we're
8 referring to, from both the White House and
9 also the ground perspective. Do you recall
10 that article?
11 A. Yes.
12 Q. Did you read it?
13 A. Yes.
14 Q. About at the time it was publicized?
15 A. I don't know exactly when I read it, but
16 I read it.
17 Q. Were you aware of it when you were
18 meeting with Mr. Bissonnette about some of the
19 details that were in that article?
20 A. To be honest, I'm not sure if I -- if it
21 -- I thought it came out after I met Matt, not
22 before, but I'm not sure what the sequence was.
23 Q. Did Mr. Bissonnette express to you in
24 that meeting any frustration with the fact that
25 information about the raid was being marched

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1 E. CHENEY
2 out into the public by the politicians and
3 credit wasn't being given to the actual members
4 who risked their lives to complete the raid?
5 MS. NORMAN: Objection to form.
6 A. I would separate those two; the last
7 part of what you said, the credit part, I would
8 say that he was not frustrated that the credit
9 was not given to the Navy Seals; he did not
10 want -- he was frustrated that the politicians
11 had leaked anything -- that even had anything
12 to do with the Navy Seal.
13 Q. Just so I understand, when you say
14 "leaked," it's because what Navy Seals do is
15 traditionally secret; is that why you use the
16 word "leak"?
17 MS. NORMAN: Objection.
18 A. Because -- yeah -- you're using the word
19 leak -- yes, it's traditionally a secret, yes,
20 I think.
21 Q. The frustration, if I understand it, and
22 you let me know if you agree, was that
23 President Obama, Vice President Biden were
24 touting the killing of bin Laden as a political
25 victory as opposed to a victory by the

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1 E. CHENEY
2 military?
3 A. No, that's not correct; it's not as
4 opposed to; it's specifically, he was upset
5 that they had credited the Navy Seals and
6 that -- that they had talked about it at all,
7 really; the Navy Seals were not supposed to be
8 part it -- of anything that Obama said.
9 Q. I'll just rephrase the question so I
10 understand whether this was a frustration
11 expressed to you by Mr. Bissonnette, that he
12 was frustrated that the politicians were
13 talking about the raid for political purposes?
14 MS. NORMAN: Objection to form.
15 A. Yes.
16 Q. Now, I'm going to show you what's been
17 marked as Exhibit 138; it's an e-mail exchange
18 that you were a part of that is around the time
19 of December 22, 2011?
20 A. Right.
21 Q. I'd like you to take a moment to read
22 and then I'll ask you some questions about it.
23 A. Okay. Can I take the thing out so I can
24 see?
25 Q. The staple?

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1 E. CHENEY
2 A. Yeah.
3 Q. Sure.
4 A. Okay.
5 Q. Do you recall having any e-mail exchange
6 with Mr. Sevier about an overview of what
7 Mr. Bissonnette would have been discussing in
8 his book, perspective book?
9 A. Yes.
10 Q. Was the meeting with Mr. Bissonnette at
11 some time before December 22nd of 2011?
12 A. Yeah.
13 Q. Who prepared the outline that's
14 attached?
15 A. It looks like Sevier prepared it; I
16 didn't write it.
17 Q. Do you know when Mr. Sevier prepared
18 this outline?
19 A. Only based on the dates that are
20 presented in this document -- in this exhibit;
21 it looks like it was around December 22nd,
22 since the e-mail is referring to the outline.
23 Q. Was there a separate second meeting that
24 Mr. Bissonnette had with you and Mr. Sevier
25 together?

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1 E. CHENEY
2 A. It wasn't a second meeting; we had a
3 meeting with Ben, Matt, and myself.
4 Q. Was that the very first --
5 A. That was the second time I met him.
6 Q. The second time you met Mr. Bissonnette?
7 A. Right.
8 Q. So the first meeting you described
9 earlier was the first meeting in your office on
10 Fifth Avenue?
11 A. Correct.
12 Q. A week or several days after, you had
13 another meeting with Mr. Sevier and
14 Mr. Bissonnette?
15 A. Yes.
16 Q. Who arranged that meeting?
17 A. It would have been me.
18 Q. How long was that meeting?
19 A. An hour; I'm not sure.
20 Q. Do you recall whether or not that was
21 the moment Mr. Bissonnette produced the hat
22 that was an artifact from the raid?
23 A. I'm not sure; yeah, I don't know.
24 Q. Did Mr. Bissonnette produce anything in
25 writing other than simply himself and telling

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1 E. CHENEY
2 his story?
3 A. Just himself.
4 Q. Did Mr. Bissonnette express any concern
5 about secrecy or confidentiality attaching to
6 his account?
7 A. Yes.
8 Q. What did he tell you about that?
9 A. He did not want his name to be used for
10 the book because he did not want it to be about
11 him; he wanted it to be for the historical
12 record. He -- as far as he knew, going back to
13 this issue of what he was allowed to say, he
14 was not -- he wasn't allowed to say anything
15 that was classified and that -- which in terms
16 of what he had signed of those two documents,
17 there was two things that he was not allowed to
18 talk about because he had signed
19 confidentiality agreements; one had to do with
20 technology and one had to do -- or technology
21 they had developed for the raid specifically,
22 and one had to do with the location.
23 Q. In the second meeting, were financial
24 issues discussed in relating to the book?
25 A. No.

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1 E. CHENEY
2 Q. Was there any discussion of an advance
3 or projections of royalties or anything like
4 that?
5 A. No, in that meeting, no.
6 Q. Did Mr. Sevier explain the publishing
7 process to Mr. Bissonnette?
8 A. I think so, yes.
9 Q. On the second page, there's a reference
10 that Mr. Sevier states; I think it's the 12/14
11 e-mail of December 2nd, "he made me nervous
12 with that talk about encrypting." Do you
13 recall any discussions about encrypting?
14 A. Not specifically about encrypting, but
15 the issue for him, in terms of secrecy also,
16 just had to do with not exposing himself or any
17 of his seal colleagues to any danger. So there
18 were threats against the Navy Seals after Obama
19 announced that the raid had happened and that
20 bin Laden was killed and he -- it was very
21 important to keep this as secret as possible in
22 terms of, you know, his name, because he could
23 be in danger or his friends could be in danger
24 and he would never want to put his friends in
25 danger.

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1 E. CHENEY
2 Q. At the time that you had the two
3 meetings in December of 2011, were you aware of
4 whether Mr. Bissonnette was still on active
5 duty or not?
6 A. I don't believe he was on active duty;
7 he was processing out from what I remember.
8 Q. Did Mr. Bissonnette tell you when he was
9 processing out?
10 A. He was processing out, I think, around
11 at that time, yeah.
12 Q. Did he describe the mechanism by which
13 he would process out?
14 A. It was just he had talked to people at
15 the office -- at the command.
16 Q. What was the next step that was taken in
17 connection with this book after this
18 December 22, 2011, meeting?
19 A. Again, I'm not exactly sure on
20 sequencing, in terms of day-to-day, but we had
21 a verbal agreement with Ben that if we could
22 come to terms on a contract, that they would
23 pay him -- he would get a \$1,000,000 advance
24 for the book.
25 Q. Did you have any discussions with

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1 E. CHENEY
2 Mr. Bissonnette about whether you, Elyse
3 Cheney, needed to have any security clearance
4 in order to hear the details of the raid?
5 A. You know, I don't know; I don't know.
6 Q. Did you have any reservations about that
7 issue, about whether you were in a position to
8 hear those details?
9 A. I don't remember.
10 Q. Did you seek legal advice on that point
11 for yourself?
12 A. For myself? No.
13 Q. That topic, the topic being whether it
14 was appropriate to hear the details of the
15 raid, was that something that you discussed
16 with Mr. Sevier?
17 A. I don't know, but I would say that the
18 general protocol in the publishing industry is
19 that there, as you know, many, many public
20 officials write memoirs and, generally, my
21 understanding is that the agent and the
22 co-writer is -- cause, invariably, they use a
23 co-writer to hear the story, then they write it
24 down -- the writer writes it down, then at that
25 point, you have to give it to the PRB, if

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1 E. CHENEY
2 you're in the CIA, for example. So, in other
3 words, it's almost impossible for people in
4 publishing not to be privy to that story before
5 the publication review would happen. It's --
6 it would be unusual for a person in the
7 military, for example, who's not a writer, to
8 write an entire book, something they never done
9 it before, show it to the government for
10 review, and then get an agent. So, in other
11 words, I highly doubt, for example, Stanley
12 McChrystal didn't tell his agent or lawyer and
13 show his writer, whoever that was, their -- his
14 manuscript before whoever reviewed his
15 manuscript saw it. So, as a practical matter,
16 we would never be able to publish books if we
17 had to -- if everything was kept from the
18 agent; you just couldn't record the story; it
19 just wouldn't happen.
20 Q. Let me backtrack. Did you and
21 Mr. Sevier have a separate discussion about
22 what to do next after the outline was presented
23 on December 22nd of 2011?
24 A. Yes, he needed to get a writer, so we
25 talked about who could be a potential writer

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1 E. CHENEY
2 for the book, and after that, we interviewed --
3 Ben referred me to that guy Scott Miller, the
4 literary agent and Scott put forward Kevin
5 Maurer as a potential candidate to write the
6 book, and then I got two other names from
7 people as other potential candidates to write
8 the book, then we met -- Matt and I met in D.C.
9 with the three potential candidates to write
10 the book, including one of whom was Kevin
11 Maurer and then we talked to Ben, and the three
12 of us decided that Kevin Maurer would be the
13 best candidate to write the book.
14 Q. When you spoke to Scott Miller, did you
15 tell him that you had a potential author who
16 would be telling a first-hand account of the
17 bin Laden raid?
18 A. I'm sure I -- I -- yeah, yeah, no more
19 details than that.
20 Q. When you told Mr. Miller that, did you
21 ask him to keep it confidential or private in
22 any particular way?
23 A. Yes.
24 Q. What was the reason for that?
25 A. Because it's a private project and we

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1 E. CHENEY
2 were going -- number one, we weren't announcing
3 the book; I think we were also just deciding on
4 -- trying to understand what the process was
5 for Matt to fulfill his legal obligations to
6 the government, so we were looking for a lawyer
7 at the same time to help us determine what that
8 process would be, and it's nobody's else's
9 business in general, so even if it were not a
10 sensitive project, I still would want
11 confidentiality just because I don't like to
12 advertise my clients' business.
13 Q. Mr. Miller eventually got you in touch
14 with Mr. Maurer? Is that how it worked?
15 A. Yes.
16 Q. When did you first speak with Kevin
17 Maurer?
18 A. The first time that -- I think I
19 probably spoke to him on the phone prior to our
20 meeting, but it was at this D.C. meeting that I
21 met Kevin Maurer.
22 Q. That meeting, was it some point after
23 New Year's of 2012?
24 A. I would say so; I would guess that, yes;
25 that would be accurate.

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1 E. CHENEY
2 Q. You took a train down to D.C. and met
3 with Mr. Maurer at some hotel; I think it was
4 with Mr. Sevier?
5 A. Yes, yes; Sevier was not there.
6 Q. It was just you and Maurer?
7 A. Matt -- me, Mr. Bissonnette, and Maurer
8 and we met two other candidates as well.
9 Q. Did you meet Mr. Bissonnette in D.C.?
10 Is that how it happened?
11 A. Yes.
12 Q. Did you meet with him before the lunch
13 meeting with Maurer or after, or how did that
14 work out?
15 A. He picked me up at the train -- I may
16 have taken a flight; I'm not sure. I think I
17 did take a flight, and then he picked me up at
18 the airport; we went together to the the hotel
19 where we were going to meet the candidates.
20 Q. What information did Mr. Bissonnette
21 give to the candidates?
22 A. Just the outlines of who he was, and the
23 story that he wanted to tell; it was more about
24 us asking them questions than them asking us
25 questions.

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1 E. CHENEY
2 Q. Did you ask these authors, Mr. Maurer
3 and the others, to sign any confidentiality
4 agreements or any kind of other understanding
5 that issues they discussed would be
6 confidential?
7 A. The NDA; they signed NDAs.
8 Q. Do you have a copy of those NDAs?
9 A. No.
10 Q. If they signed NDAs, who would have kept
11 a copy of them?
12 A. I would have a copy; I don't know if I
13 produced that or not. To be honest, I don't
14 remember if we had them sign NDAs.
15 Q. That's why I asked the question, if. If
16 NDAs were signed, would copies of those
17 agreements be in that file that you described
18 is an inch and a half thick?
19 A. No, it would be on my computer, if there
20 was anything signed.
21 Q. In other words, a PDF version of the
22 document would be saved and you would destroy
23 the original? Is that how it would work?
24 MS. NORMAN: Objection to form.
25 A. Honestly, we never really took NDAs that

<p style="text-align: right;">Page 121</p> <p>1 E. CHENEY</p> <p>2 seriously because I've always been told that</p> <p>3 they're not enforceable. So, like I said, I</p> <p>4 might not of even had them sign NDAs, but I</p> <p>5 think I did, but I don't usually -- I probably</p> <p>6 scanned it in to -- or had my assistant scan it</p> <p>7 in and put it in his contract file, but it's</p> <p>8 possible I didn't do it as well.</p> <p>9 Q. I'm going to serve a demand on</p> <p>10 Mr. Johnston for the production of the NDAs, if</p> <p>11 they exist; they may not. I never received</p> <p>12 them.</p> <p>13 A. Sure.</p> <p>14 Q. Thank you. Whose decision was it to</p> <p>15 retain Mr. Maurer?</p> <p>16 A. That was the decision -- ultimately,</p> <p>17 that's Matt's decision -- Bissonnette, but Ben</p> <p>18 Sevier and myself also give our opinions as to</p> <p>19 who we think might do the best job.</p> <p>20 Q. Do you know whether or not Mr. Maurer</p> <p>21 sought clearance from the government in order</p> <p>22 to hear the details of the raid?</p> <p>23 A. No, but I don't think he did, but also,</p> <p>24 he has done work with many military authors</p> <p>25 where he's written their stories. So, like, it</p>	<p style="text-align: right;">Page 123</p> <p>1 E. CHENEY</p> <p>2 the story of the bin Laden raid was different,</p> <p>3 in any particular sense, than any other book</p> <p>4 that was written about a military operation?</p> <p>5 A. I mean, I was not that versed on</p> <p>6 military literature so I don't know that I</p> <p>7 would be the one -- I wasn't thinking about it</p> <p>8 that way, no.</p> <p>9 Q. How did Kevin Podlaski come into the</p> <p>10 picture?</p> <p>11 A. We were looking for a lawyer so that --</p> <p>12 to help Matt follow whatever his legal</p> <p>13 obligations were in regards to the publication</p> <p>14 and, so then, I asked around and Scott Miller,</p> <p>15 Kevin Maurer's lawyer suggested this guy, Kevin</p> <p>16 Podlaski, as somebody who was familiar with</p> <p>17 this process.</p> <p>18 Q. Did Mr. Podlaski's name come to you</p> <p>19 first, or Mr. Bissonnette, first, or do you</p> <p>20 even know? In other words, the identity of --</p> <p>21 A. Come to me first.</p> <p>22 Q. Then you passed on Mr. Podlaski's</p> <p>23 details to Mr. Bissonnette? Is that how it</p> <p>24 worked?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 122</p> <p>1 E. CHENEY</p> <p>2 goes back to what I was saying before, there's</p> <p>3 many people in the military who work with</p> <p>4 writers on their projects before they show it</p> <p>5 to the publishing review board, and Maurer --</p> <p>6 Kevin had done several books on military</p> <p>7 matters, so I doubt he sought security</p> <p>8 clearance. An ordinary citizen I don't think</p> <p>9 can just go and ask for security clearance.</p> <p>10 Q. Do you think that the bin Laden raid</p> <p>11 stood out as a source for a book that was</p> <p>12 different and more compelling than, say, other</p> <p>13 military operations that had been written</p> <p>14 about?</p> <p>15 A. Can you repeat that question, please.</p> <p>16 Q. I'll ask the reporter to read it back</p> <p>17 because I don't know if I can rephrase it so</p> <p>18 eloquently as I just did.</p> <p>19 A. Sure.</p> <p>20 (Whereupon, the record was read</p> <p>21 by the reporter.)</p> <p>22 MR. JOHNSTON: Object to the</p> <p>23 form of the question, compound.</p> <p>24 A. I think it was a very compelling story.</p> <p>25 Q. Let me rephrase it. Do you think that</p>	<p style="text-align: right;">Page 124</p> <p>1 E. CHENEY</p> <p>2 Q. Did you or Mr. Bissonnette vet</p> <p>3 Mr. Podlaski's background to know whether he</p> <p>4 was the appropriate person for the job?</p> <p>5 A. If you mean -- if by vetting, you mean,</p> <p>6 did we interview him, ask him questions, look</p> <p>7 at his website to see what he has done before?</p> <p>8 Q. Yes.</p> <p>9 A. That's what we did, yes; that was the</p> <p>10 process.</p> <p>11 Q. Were you satisfied that he would be able</p> <p>12 to handle this particular piece of work as</p> <p>13 opposed to Mr. Moss?</p> <p>14 A. Yes, he seemed to know more about it.</p> <p>15 He had been a military man himself; he had</p> <p>16 vetted this Dalton Fury manuscript that was</p> <p>17 confirmed by Scott Miller, so yeah, he, you</p> <p>18 know --</p> <p>19 Q. I'm going to show you what's been marked</p> <p>20 previously in a prior deposition as Exhibit No.</p> <p>21 9. Exhibit No. 9 is an e-mail that is from</p> <p>22 Mr. Sevier to you, dated January 3rd of 2012,</p> <p>23 and it sets forth a writing schedule. Do you</p> <p>24 see that?</p> <p>25 A. Yes.</p>

ELYSE FAITH CHENEY
 BISSENETTE vs PODLASKI

January 27, 2017
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1 E. CHENEY

2 Q. Do you recall receiving this?

3 A. I mean, I don't recall it specifically,

4 but I see it and I got --

5 Q. Now, I'm trying to put dates in

6 reference. Was Mr. Podlaski chosen as the

7 lawyer before or some time after this e-mail

8 exchange?

9 A. This was done on January 3rd, it's

10 possible that we chose him afterwards, but I'm

11 not sure.

12 Q. There's a description of an intensive

13 five month writing schedule in this e-mail;

14 it's the first line of the e-mail. Why was

15 such an intense schedule contemplated?

16 A. I feel like they wanted to publish

17 around the September 11th date, and so we

18 decided it was important to get it done quickly

19 and -- yeah.

20 Q. The idea of having the book published by

21 September 11th, was it because there would be

22 more interest in the book around the time of

23 the anniversary of the 9/11 attack?

24 A. Yeah, that's the idea; more potential

25 for publicity.

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1 E. CHENEY

2 Q. I'm going to show you what's been marked

3 as Exhibit 11, which is also an e-mail exchange

4 around that same time of early January

5 involving Mr. Bissonnette. Now, the e-mail at

6 the bottom, I think that the order of this goes

7 from the bottom; is that -- Mr. Bissonnette is

8 writing to Mr. Sevier and copying you about the

9 author selection?

10 A. Right; you're talking about on the first

11 page?

12 Q. Yes.

13 A. Yes, the "I'll see what I can do"

14 e-mail?

15 Q. Yes. And after that, on the 5th, you

16 sent to Mr. Bissonnette something that was on

17 the Huffington Post website about a bin Laden

18 movie, and you wrote, "this is what I mean."

19 Do you recall having sent that to

20 Mr. Bissonnette?

21 A. Hold on; where is my e-mail that you're

22 talking about?

23 Q. It's in the middle of the first page of

24 Exhibit 11. On January 5th at 2:25 p.m., it

25 appears that you sent an e-mail and wrote,

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1 E. CHENEY

2 "this is what I mean," and there's an

3 attachment to a Huffington Post article, which

4 is also attached to this exhibit, and the

5 Huffington Post article deals with a probe led

6 by Congressman Peter King into the leaking of

7 classified information relating to the bin

8 Laden raid?

9 A. I see the article; I just don't see the

10 e-mail from it.

11 Q. I'll show you. In the middle of

12 Exhibit 11, there's an e-mail right there.

13 A. Oh, I see, okay.

14 Q. It's a very small e-mail; there's not

15 much to it; it's one sentence, "this is what I

16 mean"?

17 A. Yeah.

18 Q. Do you recall sending that?

19 A. No.

20 Q. Do you recall why that article

21 discussing Congressman King's probe into the

22 leaking of classified information about the bin

23 Laden raid was something that you would have

24 sent to Mr. Bissonnette?

25 A. Why would I have sent that?

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1 E. CHENEY

2 Q. Yes.

3 A. So he was aware of what was going on

4 with relation to that movie. I think it had to

5 do with, like, he should stay away from that

6 movie because these people may be the -- maybe

7 Panetta shouldn't have introduced those people

8 to the CIA to help on the movie, so yeah, we

9 discussed his just staying completely clear of

10 it.

11 Q. Before you sent Mr. Bissonnette the

12 article, I'm presuming you would have read the

13 article; correct?

14 A. Yes.

15 Q. In the article, and I'm now asking you

16 to take a look at what -- it's listed as

17 page 12, the very top of it.

18 A. Got it.

19 Q. In the 6th paragraph in that article, it

20 states -- it's a long sentence and I'll just

21 repeat it, "he sought information on talks

22 among the White House, the Pentagon, and the

23 CIA about providing Hollywood executives with

24 access to covert military operators and asks

25 whether the film would be submitted to the

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1 E. CHENEY

2 military and the CIA for prepublication

3 review." Do you see that?

4 A. Mm-hmm.

5 Q. Did it occur to you, as you write that

6 article, that there was an issue as to whether

7 Mr. Bissonnette needed to submit the book for a

8 prepublication review?

9 A. No, because I've been told -- first of

10 all, this is all related to the CIA. Again, I

11 was going on the good faith that what

12 Mr. Podlaski told us, which is the fact that

13 Matt was retired, meant that he had an optional

14 -- an option whether or not he wanted to show

15 it to the government. Podlaski also said that

16 while the CIA has a clear process for this,

17 everybody knows there's a PRB, Publication

18 Review Board; everyone knows you have to submit

19 it. The Navy didn't have anything clear, and

20 that the guidelines weren't clear so, you know,

21 it was different; they didn't have, like, a

22 publication review board.

23 Q. What I'm asking is, I think I understood

24 your testimony was that by this time, this is

25 now January 5th, that you're saying this

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1 E. CHENEY

2 e-mail --

3 A. Mm-hmm.

4 Q. -- that Mr. Podlaski had not yet been

5 retained?

6 A. I'm actually not sure when we retained

7 Podlaski or when I first started talking to

8 him. It would have been very quickly because

9 we were concerned with doing whatever he was

10 supposed to do; there was no way we were going

11 to do something that he wasn't supposed to do.

12 Q. At the time you sent this e-mail on

13 January 5th of 2012 and sent a copy of this

14 Huffington Post article, had you already spoken

15 to Mr. Podlaski and obtained the information

16 that you just testified that he gave you about

17 the review process?

18 A. I'm not sure of the sequence of date,

19 you know, from day-to-day.

20 Q. Do you know one way or the other, as

21 you're testifying today, whether you had spoken

22 to Mr. Podlaski before January 5th of 2012?

23 A. I'm sure there's a record; I don't know

24 exactly. Like I just said, I don't know what

25 my first date of contact with Podlaski was.

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1 E. CHENEY

2 Q. On Sunday, January 8th, Mr. Bissonnette

3 replies to your e-mail. Do you see that? It's

4 the very top of Exhibit 11.

5 A. Yes.

6 Q. In the body of his e-mail, if you could

7 just read it to yourself; I'll just ask you

8 some questions about his response to you.

9 A. Yeah, I see it.

10 Q. At the very bottom, you obviously flew

11 down because he's meeting you at the airport;

12 correct?

13 A. Right, right.

14 Q. As you testified earlier, he picked you

15 up --

16 A. Right.

17 Q. -- so that's consistent with what you

18 just testified to. In the paragraph that

19 starts off with the book. Also,

20 Mr. Bissonnette wrote "if the book hits bumps

21 in regards to sensor issues since there is a

22 Captain Phillips movie coming out, what if we

23 worked on a book specifically related to that

24 topic and released it with the movie question

25 mark, exclamation. Just a thought, question

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1 E. CHENEY

2 mark, exclamation." Do you recall that?

3 A. I see it.

4 Q. Did you discuss with Mr. Bissonnette the

5 possibility of writing a book about the Captain

6 Phillips raid to coincide with the Tom Hanks

7 movie about the same subject?

8 A. I don't remember discussing a book to

9 coincide with the film, no. I remember we

10 talked about his potentially doing something

11 short about that raid, whatever that's called,

12 yeah, but not to coincide with that film.

13 Q. The idea about writing about the Captain

14 Phillips raid or operation or however we can

15 describe it, was that Mr. Bissonnette's idea,

16 or was this something you had already been

17 discussing by January 8th of 2012?

18 A. This whole idea about Phillips?

19 Q. Yes.

20 A. He had said that he was on the Phillips

21 raid, but I don't think we -- I didn't take

22 seriously of the idea of doing a book on the

23 Phillips raid, if that's what you're asking.

24 Q. Now, in the e-mail, there's a discussion

25 about the book being censored, did you discuss

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1 E. CHENEY
2 that topic with Mr. Bissonnette?
3 A. Yeah.
4 Q. How was it discussed?
5 A. We needed to find out what your
6 obligations are; and he needs to find out -- he
7 wants to know what he's supposed to do; he
8 doesn't remember signing anything except for
9 the document that I told you may be the
10 technology and the location confidential, so he
11 wanted to know what he was supposed to do and
12 we were going to need to find that out. He's
13 very conscientious about wanting -- he
14 certainly wanted to do what he was supposed to
15 do.
16 Q. Did you receive a copy of the first
17 draft of the contract before or after
18 Mr. Podlaski was retained?
19 A. It would of very likely been that I
20 would have gotten the publishing contract after
21 Podlaski was retained. Podlaski worked and
22 consulted on the collaboration agreement
23 between Kevin Maurer and Mark Owen -- Matt
24 Bissonnette, and I believe that Podlaski also
25 looked at the publishing agreement with

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1 E. CHENEY
2 Penguin.
3 Q. Once Mr. Podlaski was selected to be the
4 lawyer for Mr. Bissonnette in connection with
5 No Easy Day, what was your involvement?
6 A. Often -- because I knew more about the
7 publishing process, I would talk to Podlaski,
8 you know, myself and then report back to Matt,
9 but then Matt would sometimes talk directly to
10 Podlaski himself, you know; he wanted to hear
11 from Podlaski what the process was; what his
12 obligations were specifically; he wanted to vet
13 him as well and make sure this was someone he
14 can work with.
15 Q. In connection with Mr. Bissonnette's
16 obligations as a Navy Seal, those were
17 conversations that Mr. Bissonnette would have
18 had with Mr. Podlaski, separately and apart
19 from you?
20 A. Yeah.
21 Q. Were you part of any phone conferences
22 about that topic with Mr. Podlaski and
23 Mr. Bissonnette?
24 A. I don't know if we -- we may have had
25 phone conferences, but basically, what I said

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1 E. CHENEY
2 to you, Podlaski told me what he thought Matt's
3 obligations were; he also -- I don't know what
4 transpired between Podlaski and Matt, but they
5 talked also very specifically about what he was
6 supposed to do. At one point, all three -- we
7 may have talked about it, but I don't know.
8 Podlaski made it clear that he -- Matt could
9 work on the manuscript with Kevin, and then, at
10 that point, he would show the manuscript to
11 Podlaski, and Podlaski had security clearance
12 and could vet it.
13 Q. Are you aware or not as to whether
14 Mr. Bissonnette and Mr. Podlaski had separate
15 telephone conversations about that topic
16 without your involvement?
17 A. I'm sure they did.
18 Q. You don't know, one way or the other,
19 what they said, do you?
20 A. I know that Matt talked to Podlaski and
21 had a similar conversation; there may have been
22 more in the conversation that I had with him
23 about what his obligations were. Podlaski said
24 the same thing to him that he said to me; I
25 know that.

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1 E. CHENEY
2 Q. How do you know that?
3 A. Because we talked after -- I talked to
4 Podlaski then Matt talked separately to
5 Podlaski. Podlaski had questions for Matt, and
6 then Matt and I convened and said what do you
7 think of Podlaski, and Matt said, "you know,
8 he's a military guy;" he connected with him,
9 and so that was it; should we use Podlaski,
10 yes.
11 Q. Did you have an understanding of
12 Podlaski, one way or the other, that
13 Mr. Bissonnette was supposed to obtain his
14 disclosure agreements with the Navy Seals or
15 the Navy itself?
16 A. That was between Matt and Podlaski.
17 Q. The retainer agreement between
18 Mr. Podlaski and Mr. Bissonnette, did you have
19 an involvement in that process?
20 A. I think he forwarded it to me, and I
21 forwarded it to Matt; I'm sure I looked at it
22 and then forward it to Matt.
23 Q. Was there a specific process by which
24 that retainer was handled to ensure of Mr.
25 Bissonnette's personal safety?

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1 E. CHENEY
2 A. I don't remember.
3 Q. Do you recall whether or not there was
4 any kind of sealed envelope system to protect
5 Mr. Bissonnette's identity in connection with
6 the signing of the retainer agreement?
7 A. Not in the signing of a retainer
8 agreement, from what I remember; it's possible,
9 but I don't know.
10 Q. Do you recall any advice by Mr. Podlaski
11 to protect Mr. Bissonnette's private
12 information, that he should create some kind of
13 double blind corporation system?
14 A. Yes, yes, I do recall that, yes.
15 Q. Do you know why that was created?
16 A. I don't think they created it, but
17 Podlaski would call and come up with different
18 schemes that he had about how Matt could
19 protect his identity.
20 Q. Did you have a role beyond, obviously,
21 your role as a literary agent for Matt
22 Bissonnette, but a role as a conduit of
23 information between Mr. Bissonnette and
24 Mr. Podlaski?
25 A. Sometimes, yes.

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1 E. CHENEY
2 Q. Can you describe that for me?
3 A. Well, you know, with any client,
4 sometimes you end up talking to the lawyer and
5 sometimes the client talks to the lawyer; it,
6 sort of, just depends, so, yeah, that's how it
7 was.
8 Q. Do you recall what topics or information
9 you would have had an involvement with as it
10 relates to Mr. Podlaski's representation of
11 Mr. Bissonnette?
12 A. Sure. Well, Podlaski -- we talked about
13 security, making sure Matt's name was not
14 public. I talked to Podlaski about the
15 collaboration agreement with Kevin Maurer and
16 making sure that Kevin Maurer would keep the
17 whole story confidential and Matt's identity
18 and all that confidential. Podlaski came up
19 with some ideas for insurance -- that he wanted
20 some kind of insurance account or something
21 that, if Matt -- if Kevin had not obeyed the
22 rules of confidentiality of the agreement, that
23 he could be liable for. Podlaski talked -- I
24 think he looked at a search in Virginia for
25 Bissonnette's name to see if it came up in the

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1 E. CHENEY
2 public record in order to protect his identity.
3 Q. Beyond that, do you recall any other
4 involvement that you had as it relates to Mr.
5 Podlaski's representation of Mr. Bissonnette?
6 A. Just in general, through the whole
7 process, you mean?
8 Q. I just want to know the nature of your
9 involvement. In other words, if you were a
10 conduit of information; if you yourself relied
11 on anything that Mr. Podlaski had said?
12 A. Oh, I mean, I absolutely relied on what
13 Mr. Podlaski has said. I want -- not only do I
14 not want my clients to break the rules, but I
15 don't want to break them either, so Podlaski --
16 when Podlaski said that's what Matt had to do,
17 I wanted to make sure that it's done the way
18 it's supposed be done. I relied a lot on
19 Podlaski throughout the entire process.
20 Q. Did you consider Mr. Podlaski your
21 lawyer in any sense?
22 A. No.
23 Q. The legal bills, though, were sent to
24 you?
25 A. Right.

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1 E. CHENEY
2 Q. Why is that?
3 A. Clients just depend on you, so you get
4 everything -- not you get everything, but
5 Podlaski probably -- frankly, I don't know; I
6 have no idea why they were sent to him.
7 Q. What you just described to me sounds
8 like something a diva would ask for, but I
9 don't see Mr. Bissonnette being a diva?
10 A. No, no, Podlaski took it upon himself to
11 send it to me.
12 Q. So it wasn't your idea to have the legal
13 bills sent to Mr. Bissonnette; it was
14 Mr. Podlaski's idea to send them to you?
15 A. Podlaski just sent them to me.
16 Q. You didn't ask for that arrangement?
17 A. I don't recall.
18 Q. Let me know if you want to take a break,
19 if you're tired.
20 A. Yeah, I'll take a break.
21 (Whereupon, a recess was taken
22 at this time.)
23 (Whereupon, Publishing Contract
24 was marked as Exhibit 139, for
25 identification, as of this date.)

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1 E. CHENEY
2 Q. Ms. Cheney, I've showed you what has
3 been marked as Exhibit 139. It is the executed
4 publishing contract that relates to No Easy
5 Day. Do you recall having seen this before?
6 A. Yes.
7 Q. I just want to point out certain terms
8 in the contract to you. On the first page of
9 the contract --
10 MS. NORMAN: Is this it right
11 here?
12 MR. FURMAN: Yes.
13 Q. The first paragraph where it says,
14 "tentative title." Do you see that?
15 A. Yep.
16 Q. I'll read it so that it's on the record.
17 It describes the book as "the work shall be an
18 account of the author's career as a member of
19 the Navy Seals including, but not limited to, a
20 complete and detailed account of the Special
21 Forces Operation to apprehend the target,
22 popularly known as Osama bin Laden, on or about
23 May 2, 2011, in Pakistan. The work shall
24 include a minute by minute account of the
25 author's direct experiences leading up to the

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1 E. CHENEY
2 raid, on the raid, and in the aftermath of the
3 raid, including the author's observation of the
4 death of bin Laden, at which, the author hereby
5 represented he was present. The work shall
6 also detail the author's personal experiences
7 during the raid that have not previously been
8 reported in the media or otherwise disclosed
9 publicity." Do you see that?
10 A. Do I? Yes.
11 Q. Based on that, was it your understanding
12 that Mr. Bissonnette was actually present at
13 the time that bin Laden was killed?
14 MS. NORMAN: Objection to form.
15 A. Can you repeat the question.
16 Q. I'll repeat the question because there
17 was an objection at the end. Who wrote this
18 description?
19 A. The publisher.
20 Q. Did you approve it on behalf of Mr. --
21 A. Did I approve it? I mean, I --
22 apparently he signed the agreement.
23 Q. Is that description accurate?
24 A. It's always accurate what they say they
25 want at the time of doing the contract. How

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1 E. CHENEY
2 the book actually then looks is not always
3 exactly what is described in the description of
4 the book.
5 Q. In the portion of that paragraph that I
6 just read into the record, did that raise any
7 concerns for you as to whether Mr. Bissonnette
8 was allowed to permit these details to be
9 published in a book about government approval?
10 MS. NORMAN: Did the contract
11 raise concerns for her?
12 MR. FURMAN: No, did that
13 description of the work --
14 A. All I know is that we just wanted to do
15 what he was supposed to do. When they say
16 minute by minute account, that doesn't
17 necessarily mean, like, every single minute; it
18 means everything that he's allowed to say on
19 the -- it means having a fly on the wall
20 experience and so -- but if there are things
21 that he's not allowed to say, then both -- he
22 would know what's classified and the manuscript
23 would be vetted by -- it would go through the
24 appropriate channels, so no, I wasn't worried.
25 No, I didn't think we were doing -- that we

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1 E. CHENEY
2 would do anything wrong.
3 Q. At the time of that subject matter
4 description on the front page, I'll paraphrase
5 it, it states that "the author will not reveal
6 any technology that is classified or reveal any
7 technology that would otherwise compromise
8 future operations of the defense of the United
9 States." Is that something that Mr.
10 Bissonnette told you that he wanted to include
11 or be weary of in connection with the book?
12 A. Well, I told you already he signed. In
13 his memory, he had signed an agreement that
14 said he was not allowed to speak about any
15 proprietary technology created by the Navy for
16 the raid.
17 Q. I may or may not go back to this,
18 probably not, so we can put that contract down
19 for now. I'm going to show you what's been
20 marked previously as Exhibit 17 in this
21 deposition. Now, this is fast forwarding to
22 June of 2012; this is an e-mail exchange that
23 you were involved in. I want to start by just
24 -- at the very bottom of that page, there's an
25 e-mail on June 6th of 2012, at 9:53 a.m., that

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1 E. CHENEY
2 you sent to Ben Sevier where the subject matter
3 is "hey."
4 A. You want me to look at this one at the
5 bottom, you're saying?
6 Q. Yes.
7 A. Sure. I'll read it. Yeah.
8 Q. What was the major news that you wanted
9 to update Mr. Sevier about?
10 A. I knew you were going to ask the
11 question. I just don't know, at that time on
12 June 6th, what the major news could have been;
13 I don't know.
14 Q. Based on the e-mail exchange, you can
15 read it as it goes up; it goes up
16 chronologically in time.
17 A. It starts from the bottom then goes up?
18 Q. It starts from the bottom.
19 A. I don't know who "they" is; "they really
20 want to help here;" I don't know who "they"
21 are.
22 Q. Do you recall whether or not it had to
23 do with Mark Bowden's book, B-O-W-D-E-N --
24 Bowden's book, called The Finish, which also
25 related to the bin Laden raid?

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1 E. CHENEY
2 A. I don't think so because I think they're
3 talking about something here about how -- "I'll
4 pitch this as they really want to here," so my
5 guess is that this might have to do with
6 Bigelow and Boal.
7 Q. Was there any concern about the book,
8 The Finish, that was being written by
9 Mr. Bowden that had any impact on No Easy Day?
10 A. We wanted to -- we preferred that Matt
11 not cooperate with Bowden on his book -- on
12 Bowden's book so that, you know, he would be
13 able to keep his own story to himself, and we
14 didn't want -- we preferred to be the first --
15 we preferred to come out before Bowden, if we
16 could.
17 Q. The preference to come out before Bowden
18 so that the book, No Easy Day, would be
19 published first and get more attention than,
20 say, The Finish would? Is that fair to say?
21 A. I think either way the book would have
22 gotten huge attention, but publishers always
23 get these things into their head so --
24 Q. What was in your head?
25 A. Well, honesty, I don't think I cared

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1 E. CHENEY
2 that much about it; it was more Dutton that
3 cared about the publication time.
4 Q. Let me show what's been marked
5 previously as Exhibit No. 16. If you could
6 just take a moment to read to yourself, and
7 I'll ask you some questions about it.
8 A. Sure. Did you say a specific e-mail
9 you're talking about or the whole thing?
10 Q. If you can read the whole thing, there's
11 not a lot to it.
12 A. Sure. Starting at the bottom and coming
13 back way up?
14 Q. I think that's the way it works.
15 A. Okay.
16 Q. There are two topics on Exhibit 16.
17 First, there's "a call with Fox" and then
18 there's at the end at the top of the exhibit,
19 there's an e-mail exchange with Mr. Bowden.
20 First, as it relates to Fox, what did this
21 involve? What was being discussed at that
22 time? This is around May 21st of 2012.
23 A. Matt knew a couple of people at Fox, and
24 I believe the person he's referring to is Bill
25 Shine, and I think Fox had expressed interest

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1 E. CHENEY
2 if he were to do a book and having Matt on to
3 be interviewed or, you know, to do something
4 around the publication of the book, and so Matt
5 is saying should he reach out directly to Fox
6 to discuss that possibility.
7 Q. In your e-mail on May 21st at 4:00 or
8 5:00 p.m., it's at the top of the last page, it
9 states that you wanted Mark to do the reaching
10 out since there was personal connection, I'm
11 assuming, with Mr. Shine?
12 A. Yeah, either Shine or there's another
13 guy there who's on air and -- I actually don't
14 remember his name, who Matt knew. Brian
15 Kilmeade.
16 Q. When you refer to the publishing date,
17 what is PUB day, I'm assuming that --
18 A. Yeah, PUB date.
19 Q. Where you state that, "if we wait too
20 long, we won't be able to set a publishing
21 date," can you explain what that means?
22 A. I'm trying to figure that out myself.
23 "Here's the thing; if we wait too long, we
24 won't be able to set a PUB date." I honestly
25 don't know what I'm talking about there.

<p style="text-align: right;">Page 149</p> <p>1 E. CHENEY</p> <p>2 Q. At the top of Exhibit 16, the topic</p> <p>3 switches on this e-mail chain from "call with</p> <p>4 Fox," and then the e-mail chain comes "reply</p> <p>5 from Bowden," so I'm looking at the middle of</p> <p>6 the first page of Exhibit 16, there's an e-mail</p> <p>7 on Tuesday, May 22nd at 5:11 p.m., from</p> <p>8 Mr. Bissonnette to you and the subject is</p> <p>9 "Reply from Bowden" and Mr. Bissonnette is</p> <p>10 writing, "I hope to finish writing by the end</p> <p>11 of July --</p> <p>12 A. That's Mark Bowden writing, M.B.</p> <p>13 Q. So what it looks like is that from this</p> <p>14 e-mail that Mr. Bissonnette copied and cut and</p> <p>15 pasted Mr. Bowden's e-mail to him?</p> <p>16 A. That's what it looks like.</p> <p>17 Q. So Mr. Bowden is writing he's hoping to</p> <p>18 finish writing his book by the end of July?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. That he's eager to put the book out in</p> <p>21 the fall, but he's not sure if it would be out</p> <p>22 before election day, does it matter to you, and</p> <p>23 Mr. Bissonnette forwards that e-mail over to</p> <p>24 you?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 151</p> <p>1 E. CHENEY</p> <p>2 would be especially interested in the topic.</p> <p>3 Q. Did you have a phone call with</p> <p>4 Mr. Bissonnette about Mr. Mark Bowden's book at</p> <p>5 all? About the timing of it?</p> <p>6 A. Yeah, I believe the publisher wanted</p> <p>7 Matt Bissonnette's book to come out before Mark</p> <p>8 Bowden's and I said that to Matt Bissonnette,</p> <p>9 and then also, I think that they did not want</p> <p>10 Matt Bissonnette -- the publisher didn't want</p> <p>11 Matt Bissonnette to cooperate with Bowden on</p> <p>12 Bowden's book.</p> <p>13 Q. Just sort of a housekeeping note. I'm</p> <p>14 listening to every word you say, but I'm also</p> <p>15 multitasking at the same time so I don't want</p> <p>16 you to think that I'm being rude by not looking</p> <p>17 at you while you're speaking. I'm multitasking</p> <p>18 to make it all happen quickly.</p> <p>19 A. Okay.</p> <p>20 Q. But I am listening to everything you're</p> <p>21 saying.</p> <p>22 A. Good.</p> <p>23 Q. I want to show you what has been marked</p> <p>24 as Exhibit 13 in this case. Mostly, I'm asking</p> <p>25 questions that are obviously dealing with</p>
<p style="text-align: right;">Page 150</p> <p>1 E. CHENEY</p> <p>2 Q. You wrote back, "I would just say, just</p> <p>3 curious as to whether it was coming out pre or</p> <p>4 post election." Do you see your response</p> <p>5 there?</p> <p>6 A. Yes.</p> <p>7 Q. Why did it matter whether the book was</p> <p>8 coming out pre or post election?</p> <p>9 MR. JOHNSTON: Object to the</p> <p>10 form.</p> <p>11 A. My guess is that the publisher wanted it</p> <p>12 to come out prior to the election, although I</p> <p>13 don't know why, so what I'm thinking is that</p> <p>14 we're trying to ascertain basically when</p> <p>15 Bowden's book is coming out.</p> <p>16 Q. Did you have discussions with the</p> <p>17 publisher about trying to get the book</p> <p>18 published around September 11th and before the</p> <p>19 election because the bin Laden raid was being</p> <p>20 discussed throughout the campaign for the</p> <p>21 presidential campaign during that time in 2012?</p> <p>22 A. I don't remember too much about the</p> <p>23 campaign. The main thing was that they like</p> <p>24 that anniversary date of the 11th as sort of a</p> <p>25 symbolic kind of thing, you know, where media</p>	<p style="text-align: right;">Page 152</p> <p>1 E. CHENEY</p> <p>2 timing of the book, so the reason I'm showing</p> <p>3 you this e-mail is there's a question about</p> <p>4 whether General Petraeus is writing a memoir</p> <p>5 and this e-mail -- I'm going back in time now,</p> <p>6 this is January of 2012, January 10, Mr. Sevier</p> <p>7 is writing to you and Mr. Bissonnette and he</p> <p>8 states that "Mark, I know we had tossed around</p> <p>9 ALL IN as a title idea at breakfast, but I just</p> <p>10 learned that Petraeus has a memoir coming out</p> <p>11 with that title; I'm sure we'll come up with</p> <p>12 something even better, and we'll have plenty of</p> <p>13 time." Do you see that?</p> <p>14 A. I read the whole page.</p> <p>15 Q. Does that refresh your recollection, one</p> <p>16 way or the other, as to whether the book No</p> <p>17 Easy Day was originally meant to be titled All</p> <p>18 In?</p> <p>19 A. That was one of the titles we were</p> <p>20 considering.</p> <p>21 Q. In Mr. Bissonnette's response to that</p> <p>22 e-mail, he writes, "Yes, let's beat him to the</p> <p>23 punch," which follows your question, which was,</p> <p>24 "When is the book publishing?" Do you see</p> <p>25 that?</p>

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1 E. CHENEY
2 A. Mm-hmm.
3 Q. Was it a concern that you would want to
4 have Mr. Bissonnette's book published even
5 before General Petraeus's book?
6 MS. NORMAN: Objection to form.
7 A. It's only about the title; it's only
8 about, well, if we want to use the title and
9 his came out first, but it's really only about
10 the title.
11 Q. You were not in competition with General
12 Petraeus's book is what I'm asking?
13 A. No, no.
14 Q. Now, going back to the contract; I'm
15 sorry, if I'm leaking back to something that is
16 hard to read, but you have the contract
17 Exhibit 139?
18 A. Yes.
19 Q. In paragraph 4, specifically 4A.
20 A. Yes.
21 Q. I'm paraphrasing, but essentially what
22 it says is the book has to be published within
23 eighteen months after the acceptance of the
24 manuscript. Do you know when the manuscript
25 was accepted?

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1 E. CHENEY
2 A. The manuscript, the way you can find
3 that out is to see when he was paid so I'm not
4 sure exactly -- the manuscript, I don't believe
5 gets accepted until after the Publication
6 Review Board has looked at it because that's --
7 whatever the publication -- sorry; not the
8 publication review; after Podlaski reviewed it
9 and they've looked at it for confidential
10 information and all that stuff, then it would
11 go to Ben as the editor and then he would
12 consider whether or not it was ready to be
13 published; that's when he would get paid.
14 Q. Whatever date that was, I'm presuming it
15 was some time in 2012?
16 A. Right.
17 Q. Then the publisher had eighteen months
18 then to publish the book?
19 A. Yes.
20 Q. So, it would have been some point in
21 time, either in 2013 and just depending on the
22 timing of it, could even have been in 2014?
23 A. Mm-hmm.
24 Q. Yes?
25 A. Yes, yes; sorry. So if it was

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1 E. CHENEY
2 fourteen months from -- I mean eighteen months
3 from delivery and acceptance; this is a
4 standard clause in every agreement in
5 publishing.
6 Q. Now, in 4B, though, I don't know if that
7 is standard; I want to ask you about that
8 because 4D says, in substance, "that the
9 failure to publish the book within
10 eighteen months, that it won't be deemed a
11 violation if the failure to publish is caused
12 by restriction of governmental agencies." Do
13 you see that?
14 A. Mm-hmm.
15 Q. Is that something that's standard, or is
16 that something that is specific to No Easy Day?
17 A. It's standard. Anything that's specific
18 to No Easy Day or is generally in italics or
19 bold, which this is not; Basically, what
20 they're saying here is, unless it's a force
21 majeure, you know, a situation totally outside
22 of the publisher's control, like an earthquake,
23 then they're not going to be held to that
24 eighteen months to publish.
25 Q. Would Jeh Johnson's letter of August 30,

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1 E. CHENEY
2 2012 constitute a force majeure?
3 MS. NORMAN: Objection to the
4 form of the question.
5 A. I don't know if that's a force majeure
6 or not.
7 Q. I want to fast forward now into that
8 time period when Jeh Johnson's letter was sent,
9 and that was an event that you recall when the
10 government first stepped in?
11 A. Yes, yes.
12 Q. But leading up to that, there were
13 copies of No Easy Day that were sent as
14 advanced copies to various governmental
15 agencies; is that accurate?
16 A. I don't know how many; I think it was
17 just the Department of Defense, but yes,
18 advanced copies were sent.
19 Q. Do you know how many copies?
20 A. No.
21 Q. Do you know if it was just the
22 Department of Defense, or was it also sent to
23 the CIA?
24 A. I don't know.
25 Q. Do you know if any other agencies

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1 E. CHENEY
2 received a copy of it?
3 A. I don't know; I wasn't involved with
4 that. I know it was sent in advance, but I
5 don't know which departments got it or how many
6 were sent.
7 Q. Who made the decision to send advanced
8 copies out?
9 A. I mean --
10 MS. NORMAN: Objection to the
11 form.
12 A. There's nobody who made one decision. I
13 don't think there's one specific person who
14 made the decision. I think it was just
15 everybody thought it was a good idea.
16 Q. Were you involved in that process in
17 deciding to send out advance copies of the book
18 to various agencies?
19 A. I was probably involved in discussing
20 that, and I think it was explained to me why
21 that was a smart thing to do.
22 Q. Who explained it to you?
23 A. The discussion was between or among
24 Kevin Maurer, who had relationships within the
25 government and the public affairs officer --

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1 E. CHENEY
2 with a public affairs officer at the Department
3 of Defense; Dutton, myself, and Matt, so
4 whoever said what, I'm not exactly sure, but
5 the point was rather than them be blindsided,
6 give them a heads up to give them a chance to
7 look at it.
8 Q. What do you mean by blindsided? What
9 about the book was blindsiding?
10 A. We just wanted to let them know that the
11 book was going to be coming.
12 Q. Why?
13 A. Because when media would come, they
14 would certainly be asked questions about it;
15 probably, that's why, and it was a courtesy
16 and, like I said, we thought that's all we had
17 to do is send it to them as a courtesy because
18 Podlaski vetted the manuscript and said there
19 was no classified information in it. It was --
20 sorry.
21 Q. Is your answer complete?
22 A. Yes.
23 Q. I'm showing you what has been marked at
24 Exhibit 34 in this case. These are the legal
25 fees that were sent by Carson Boxberger to

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1 E. CHENEY
2 Mr. Bissonnette?
3 A. Right.
4 Q. They were sent to your attention. Did
5 you pay those fees, or were they paid any
6 anyone else?
7 A. Bissonnette paid them, but I -- probably
8 what happened is we would -- if money was
9 coming into us, we may have -- for Bissonnette,
10 we may have taken that money and paid from
11 Bissonnette. In other words, if money comes in
12 from the publisher, it goes into a client
13 escrow account, and as soon as it clears, we
14 distribute it to the client, 85 percent, and
15 then sometimes if there's a lawyer involved or
16 another agent. For example, in this case,
17 Kevin Maurer had an agent; we would -- as long
18 as the author agreed, we would pay the lawyer
19 directly from that amount rather than the money
20 coming -- the 85 percent coming from us, going
21 to Bissonnette to Podlaski or from us to
22 Bissonnette to Maurer. Instead, we paid -- I
23 believe what we did was we paid Maurer's agent
24 his portion; we paid Podlaski his fees, and the
25 rest -- we took our fees and then the rest went

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1 E. CHENEY
2 to Bissonnette; I believe that's what happened.
3 Q. Other than sending the legal invoices to
4 you, did Mr. Podlaski ever come to New York or
5 meet with you or discuss the matter with you in
6 person?
7 A. No, he didn't come to New York.
8 Q. The fee bills range in time from
9 January 16th of 2012 up and through, looks
10 like, September 27th of 2012 is the last time
11 entering. Do you see that?
12 A. Yeah, I see it, September 26, 2012 to
13 27th.
14 Q. When the bills come in, did you review
15 them on behalf of Mr. Bissonnette?
16 A. Yes.
17 Q. For what purpose did you review them?
18 A. Because Bissonnette barely had ever
19 spoken to a lawyer before and just really, you
20 know, was a new person to the world and so I
21 just wanted to make sure, especially because I
22 had had conversations with Podlaski, that
23 Podlaski was sending a fair bill.
24 Q. Were there any aspects of the bill that
25 you disagree with or have any dispute with on

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1 E. CHENEY
2 behalf of Mr. Bissonnette?
3 A. Yeah, I think I had Podlaski cut some of
4 the bills down because he was doing things that
5 nobody asked him to do.
6 Q. So that if he did something that no one
7 asked him to do that --
8 A. Seemed irrelevant and unhelpful.
9 Q. And you're saying that Mr. Bissonnette
10 shouldn't pay for that?
11 A. Yeah.
12 Q. Is fair to say that a lawyer shouldn't
13 be paid for work unless it's relevant?
14 MS. NORMAN: Objection to form.
15 MR. FURMAN: Can I have that
16 last question and answer read back.
17 (Whereupon, the record was read
18 by the reporter.)
19 MR. FURMAN: Strike that last
20 question among other things; it didn't
21 make sense.
22 Q. Let me go back in time. January 16th of
23 2012, the entry there is for a conference with
24 you regarding the contract review formulation
25 of a limited liability company and publication

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1 E. CHENEY
2 of events of official history by the United
3 States -- U.S. Special Operations Command. Do
4 you see that?
5 A. Mm-hmm.
6 Q. Was that the time that you first spoke
7 with Mr. Podlaski? Is that --
8 A. I'm not sure if that was the first call.
9 I think it was probably earlier because usually
10 if you are going to hire someone, you have a
11 conversation with them that's not going to be
12 billed so I believe it was earlier than that.
13 Q. Okay. Every time a bill would come in,
14 you would review it for its accuracy, and if
15 there were disputes with the work that Mr.
16 Podlaski did, you would raise an objection; is
17 that fair to say?
18 A. Generally, not always, but generally, if
19 it looked like he was padding the bills, I
20 would raise it.
21 Q. Is that something you would do for other
22 clients, or is this the first time you've done
23 it?
24 A. I think I've done it for other clients
25 as well.

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1 E. CHENEY
2 Q. The last entry, just going back to the
3 end, it's September 27, 2012, and you paid that
4 bill?
5 MS. NORMAN: Objection to form.
6 A. Again, I don't I pay the bill.
7 Q. I'm sorry; you received that bill?
8 A. I mean, if it says -- if the bill came
9 to my office, then I received it.
10 Q. Did your office receive any further
11 billing from Mr. Podlaski after that last entry
12 for work that was done on September 27th of
13 2012?
14 A. I don't believe that we received any
15 further billing; it's possible, but I don't
16 know.
17 Q. Do you know of any legal work that
18 Mr. Podlaski did on behalf of Mr. Bissonnette
19 after September 27th of 2012?
20 A. Well, if you see here, he was requesting
21 FOIA documents, and I think he was waiting for
22 those FOIA documents to come, and I believe
23 there were further questions of him here and
24 thereof, you know, the same nature as we asked
25 him throughout his advice about what Matt's

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1 E. CHENEY
2 obligations were, how to handle publicity
3 regarding Matt's obligations.
4 Q. Do you know when that was?
5 MS. NORMAN: Objection to form.
6 A. When what was?
7 Q. What you just described?
8 A. It was just ongoing so I don't know the
9 exact last time that we asked him that, but
10 that was, sort of, an ongoing thing where we
11 would call him and say the government -- the
12 media saying is this, is that true; what should
13 we say in return -- in response.
14 Q. I'm trying to now center on what
15 conversations, if any, you recall with
16 Mr. Podlaski after September 27th of 2012.
17 Could you let me know who initiated those
18 conversations?
19 A. I believe there was a conversation about
20 other -- other Navy Seals or Special Forces
21 Operators who had done books and whether or not
22 they had been vetted and I believe that's what
23 Podlaski put a FOIA request in for, so that was
24 generally the topic of discussion.
25 Q. Do you know when Mr. Podlaski put that

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1 E. CHENEY
2 FOIA request in?
3 A. I don't know, but there's something that
4 says here that he put it in, but he was waiting
5 to get a response back and I believe he pursued
6 it several times, so I'm not sure exactly; he
7 says here, on 9/24, he prepared letter to
8 client regarding FOIA request and on 25 he
9 called the Freedom of Information Act office
10 and I believe he pursued it after that as well.
11 Q. What is your basis for saying that you
12 believe he pursued it?
13 A. Because I think I talked to him on the
14 phone and he said that he was waiting for the
15 FOIA documents.
16 Q. How many times did you talk to him on
17 the phone after September 27th of 2012?
18 A. I don't know, I mean it's four years
19 ago.
20 Q. There came a point in time when you
21 stopped talking to Mr. Podlaski; is that fair
22 to say?
23 A. Yeah.
24 Q. When was the last time you had a
25 conversation with him?

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1 E. CHENEY
2 A. I mean, I don't know exactly.
3 Q. What was the topic of conversation when
4 you spoke to him for the last time?
5 A. I think that the last topic was, sort of
6 -- what other books had been published -- did
7 he know of other books that had been published
8 by special forces operators and what the
9 vetting process was for those books.
10 Q. Do you know whether that discussion took
11 place in October of 2012? Did it happen in --
12 A. It was some time between the, you know
13 -- it was some time probably before Christmas
14 of 2012.
15 Q. Do you know whether it happened before
16 or after Thanksgiving, as a benchmark?
17 A. I don't know.
18 Q. Do you know if it happened before or
19 after Halloween, if that makes a difference?
20 A. I don't know.
21 Q. It's a big event for me.
22 A. I don't know.
23 MS. NORMAN: Halloween or the
24 conversation?
25 MR. FURMAN: Halloween; it's the

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1 E. CHENEY
2 best parade in New York City.
3 Q. So you don't know one way or the other
4 if that discussion occurred in September?
5 October?
6 A. It was the fall, but I'm not sure
7 exactly what date it was.
8 Q. I just want to make the record clear.
9 So you're not sure if that conversation took
10 place either at the very end of September --
11 A. I'm pretty sure after 9/27.
12 Q. I just want to get the question out.
13 A. Sorry.
14 Q. The first rule of this is we have to
15 wait to speak; that's really because the
16 reporter is doing her best to get everything
17 down. It's just like saying that the first
18 rule of fight club is there is no fight club.
19 You don't have a memory one way or the other as
20 to whether that conversation, the last
21 conversation you had with Mr. Podlaski was
22 either at the very end of September, at some
23 point in October, or at some point in November?
24 Is that fair to say?
25 A. My guess is that it's either October or

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1 E. CHENEY
2 November. I feel like, maybe, more November,
3 and I don't know why I have this in my head,
4 but that's, sort of, what I'm thinking, but,
5 like I said, I don't have a record of a phone
6 conversation, so I don't know.
7 Q. What's the basis for saying that you
8 believe it's some time in November?
9 A. I just remember that after things were
10 unfolding, that still had -- we were still,
11 sort of, trying to determine whether there were
12 other special operators who had done books and
13 what their vetting process had been, and I
14 believe that was why Podlaski and I were
15 talking about it.
16 Q. Why do you think it was November as
17 opposed to say October?
18 A. I mean, I just, kind of, remember it
19 being later in the fall, but, like I said, I'm
20 not positive; I really don't -- I can't --
21 that's as much as I could tell you.
22 Q. Do you have any means of trying to
23 pinpoint that date of your last conversation
24 with Mr. Podlaski, either by some e-mail
25 exchange, maybe some note that you have in the

<p style="text-align: right;">Page 169</p> <p>1 E. CHENEY</p> <p>2 office, or any other kind of recording of the</p> <p>3 event?</p> <p>4 A. No, not any -- whatever recording would</p> <p>5 have been in the work that I gave to Randy</p> <p>6 Johnston.</p> <p>7 Q. What you've just told me about that, is</p> <p>8 your best recollection about that event?</p> <p>9 A. Of talking to Podlaski?</p> <p>10 Q. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. The FOIA request, do you know when that</p> <p>13 information was delivered and who it was</p> <p>14 delivered to?</p> <p>15 A. In other words, the response to the FOIA</p> <p>16 request or the FOIA request itself?</p> <p>17 Q. No, the responses to the FOIA request?</p> <p>18 A. I don't know; I really don't know. I</p> <p>19 mean, if it was delivered to anyone, I assume</p> <p>20 it would be delivered to Podlaski because he</p> <p>21 was the one who asked for it.</p> <p>22 Q. After Mr. Luskin came on the scene, was</p> <p>23 he essentially the lawyer that took over the</p> <p>24 interfacing with the government?</p> <p>25 A. Podlaski was still involved, but he</p>	<p style="text-align: right;">Page 171</p> <p>1 E. CHENEY</p> <p>2 remember.</p> <p>3 Q. Was that because there were indications</p> <p>4 from various writers including a write named</p> <p>5 Mark Hosenbal, H-O-S-E-N-B-A-L, that indicated</p> <p>6 that there was displeasure by the government in</p> <p>7 connection with the publication of No Easy Day?</p> <p>8 A. Yes.</p> <p>9 MS. NORMAN: Objection to form.</p> <p>10 Q. How did you come to learn that?</p> <p>11 A. From Hosenbal?</p> <p>12 Q. The government's displeasure with the</p> <p>13 book?</p> <p>14 A. Well, we just got a lot of media</p> <p>15 calling, saying that had the book been vetted;</p> <p>16 was he allowed to write this? What was the</p> <p>17 process by which we were vetting it? And so we</p> <p>18 were so deluged with media, so we brought on</p> <p>19 Peter Pagano and Mark Fabiani to help with</p> <p>20 publicity and publicity management because we</p> <p>21 were really overwhelmed.</p> <p>22 Q. This media attention started in the</p> <p>23 latter half of August of 2012?</p> <p>24 A. It started after -- I believe after the</p> <p>25 government saw the book or after Dutton</p>
<p style="text-align: right;">Page 170</p> <p>1 E. CHENEY</p> <p>2 wasn't interfacing with the government.</p> <p>3 Q. I'm going to ask you to use a team</p> <p>4 concept because it seems to be that there were</p> <p>5 a number of people on various e-mails after</p> <p>6 Mr. Johnson's letter, and at various points in</p> <p>7 time, they would include Mr. Luskin, almost</p> <p>8 invariably Mr. Luskin and then you would have</p> <p>9 people like Mr. Fabiani involved, Mr. Rangone,</p> <p>10 Mr. Sevier, a lawyer from Kaye Lawrence at</p> <p>11 times would be involved at least on some</p> <p>12 e-mails, Mr. Podlaski, and yourself; was there</p> <p>13 anyone else part of for a lack of a better way</p> <p>14 of describing the crisis management team that</p> <p>15 was responding to Jeh Johnson's letter?</p> <p>16 MS. NORMAN: Objection to form.</p> <p>17 A. That's sounds pretty comprehensive.</p> <p>18 Q. When I describe it as sort of a crisis</p> <p>19 management team, do you understand what I mean</p> <p>20 by that?</p> <p>21 A. Yes.</p> <p>22 Q. Responding to Jeh Johnson's letter on</p> <p>23 behalf of Mr. Bissonnette?</p> <p>24 A. The crisis management team started</p> <p>25 before the Jeh Johnson letter came, from what I</p>	<p style="text-align: right;">Page 172</p> <p>1 E. CHENEY</p> <p>2 announced -- they made an announcement of the</p> <p>3 book; I'm not sure; it's all happening within</p> <p>4 the same week.</p> <p>5 Q. I'll show you what's been marked as</p> <p>6 Exhibit 25. This is mainly to help you capture</p> <p>7 the time period that we're dealing with.</p> <p>8 A. Okay.</p> <p>9 Q. Now, at the very top of Exhibit 25,</p> <p>10 where Matthew Bissonnette is e-mailing you and</p> <p>11 copying in Mr. Rangone, Mr. Lahene, Christine</p> <p>12 Ball, which says, "maybe, hit up Kevin and</p> <p>13 Nate;" is he referring to Kevin Vance there?</p> <p>14 A. Looks like it.</p> <p>15 Q. What's that in relation to? Why could</p> <p>16 Kevin Vance be involved?</p> <p>17 A. I need to read this whole correspondence</p> <p>18 to answer that question.</p> <p>19 Q. Take as long as you'd like.</p> <p>20 A. It starts from the back?</p> <p>21 Q. It's hard to tell, but I think that's</p> <p>22 right; it goes chronologically backwards.</p> <p>23 A. Yeah, it looks like it. Okay. Got it.</p> <p>24 Q. So I just want to set the stage</p> <p>25 chronologically. At this point in time, around</p>

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1 E. CHENEY
2 August 23rd of 2012, the book had not yet been
3 published; correct?
4 A. Yes.
5 Q. The publication date was, I think, at
6 that point in time, it was September 11th?
7 A. Correct.
8 Q. There came a point in time when the
9 publication date then was moved up to September
10 4th?
11 A. Mm-hmm.
12 Q. Why was that?
13 A. I believe -- I don't know exactly why; I
14 think maybe because of all this pressure from
15 all this media; I'm not sure exactly why they
16 moved it up; that's a question for the
17 publisher.
18 Q. Was there a discussion about doubling
19 down on the fact that there was this
20 controversy over the book, that it was better
21 to move the date up as opposed to delaying the
22 publication date any further?
23 MS. NORMAN: Objection to form.
24 A. What do you mean by doubling down? What
25 does that mean?

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1 E. CHENEY
2 Q. In other words, there was indication
3 from the government that the book was
4 controversial; fair to say?
5 A. Yes -- well, not from the government; it
6 was an indication from these reporters.
7 Q. The indication from the government came
8 in the form of the letter from Jeh Johnson that
9 came on a week after this?
10 A. Yeah, that was later, yeah.
11 Q. When was the decision made to move up
12 the date from September 11th to September 4th?
13 Was it before or after the Jeh Johnson letter?
14 MS. NORMAN: Objection to form.
15 She testified she wasn't involved in it.
16 A. That's the publisher who made that
17 decision.
18 Q. So you had no involvement in that?
19 A. I'm sure they told me and I might of
20 given my opinion about it, but basically it's
21 their decision as to when the book is
22 published.
23 Q. I understand. Did your client have any
24 say in that?
25 A. Again, they would tell him, but the

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1 E. CHENEY
2 books had already arrived in the book stores by
3 that point. So if you say a book is being
4 publish on September 11th, stores generally
5 have the book a month in advance of that, so
6 the stores had the book already. At least
7 250,000 copies had already been distributed
8 across the country so whether they open the
9 boxes on September 4th and put them on the
10 shelves or whether, you know, on the 4th or the
11 11th is, I guess, what we're talking about
12 here; I, kind of, got off on my own thing; I
13 don't know what I was trying to answer.
14 Q. I'm not sure what you were answering. I
15 didn't ask you about that. I asked you about
16 --
17 MR. JOHNSTON: Objection for
18 asking the wrong question.
19 MR. FURMAN: Objection for
20 answering a question I didn't ask.
21 Q. Let me ask a different question. Let me
22 go back to this chain of e-mails on
23 August 23rd. There was a reference by
24 Mr. Hosenbal that other members of the seal
25 team were indicating that they felt betrayed by

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1 E. CHENEY
2 Mr. Bissonnette's book; did you see that?
3 A. Yes, I saw that.
4 MS. NORMAN: Do you mean, did
5 she see it now or did she see --
6 A. I just saw it in this e-mail that I just
7 read.
8 Q. Do you recall it? Do you recall it
9 happening? Receiving that information?
10 A. Yes.
11 Q. What did you think of it at the time?
12 A. You know, the reason now that he's
13 saying call Kevin and Nate, is Kevin Vance's
14 friend get them -- I think what we were looking
15 at is some seals were angry and some seals felt
16 like it was the right thing to do. The media
17 has one agenda and whether that's the truth or
18 not is another story as we've all come to know,
19 so just because media is hounding us like this
20 doesn't mean what they're saying is true or
21 not. So based on Matt's feedback, some people
22 were angry and some people weren't angry; I
23 think that's why he's suggesting to ask Kevin
24 and Nate, either for other names of people and
25 what they're -- who could speak to the issue of

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1 E. CHENEY
2 who was angry and who wasn't angry.
3 Q. Now, I want to just ask you about the
4 assembling of this response team.
5 A. Sure.
6 Q. Who retained Mr. Fabiani on to get
7 involved?
8 A. What happened was when the PR started to
9 get crazy like this, I called my friend Peter
10 Ragone, who I had worked with in relation to
11 Gavin Newsom and also I believe he had worked a
12 little bit with me on Morgan Spurlock and he
13 does crisis PR. I said, "Peter, what do you
14 think," and I had heard separately about
15 Fabiani from a colleague and it turned out that
16 Pete and Fabiani work together often and so
17 that's how Peter and Fabiani and Lehane got
18 involved.
19 Q. Is Fabiani a lawyer; is this correct?
20 A. Yes.
21 Q. Do you know what his practice covers?
22 A. He was -- well, Lehane was a press
23 secretary under Gore when they were -- during
24 the campaign. All three of them worked in the
25 Clinton White House and I don't know if Fabiani

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1 E. CHENEY
2 -- I just know that he went to Harvard Law
3 School; he generally practices sometimes in a
4 legal capacity, I believe, and then sometimes,
5 you know, he deals with this -- his
6 consultation on crisis.
7 Q. Was Fabiani offering legal advice in
8 connection with his involvement in No Easy Day?
9 MS. NORMAN: Objection to form.
10 A. Was he offering legal advice?
11 Q. Was he providing any legal services?
12 A. I mean, I didn't -- we didn't send him a
13 retainer saying you're going to be our lawyer,
14 but he was a lawyer so he had a more informed
15 opinion about the law.
16 Q. Who retained Fabiani and Lehane?
17 MS. NORMAN: Objection to form.
18 Q. Was it Bissonnette? Was it the
19 publisher? Was it you?
20 A. Publisher.
21 Q. So Fabiani's role was to represent the
22 publisher?
23 A. No, so Fabiani and Rangone were brought
24 in to do crisis PR, then Jeh Johnson sends the
25 letter and so the crisis is now escalated and,

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1 E. CHENEY
2 you know, Fabiani -- so Fabiani has some legal
3 background, so sometimes we were talking to him
4 about, you know, legal issues. He's not an
5 expert in this area; he doesn't know whether
6 something should be vetted or not vetted.
7 Q. After the Jeh Johnson letter, who made
8 the decision to bring Mark Luskin in?
9 A. Fabiani had worked with Luskin on
10 another case and he suggested we talk to Luskin
11 because we then also needed to work with a
12 criminal lawyer in addition to the advice we
13 were getting from Podlaski.
14 Q. When did you speak to Mr. Luskin?
15 A. After we got the letter.
16 Q. It was at some point on August 30th of
17 2012?
18 A. The letter came at the very end of the
19 day, in fact, at night, I believe, so I don't
20 know if we actually were able to get Luskin on
21 the phone that night or whether we talked to
22 him the next day, but within twenty-four to
23 forty-eight hours of getting that letter.
24 Q. Who was on the call when you first spoke
25 to Luskin?

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1 E. CHENEY
2 A. I'm pretty sure if Fabiani called Luskin
3 first, and they talked, and then Fabiani,
4 myself, Luskin and, I believe, Matt were on the
5 call, but I don't know exactly.
6 Q. Was Mr. Podlaski on that call?
7 A. He was on some of the calls. I don't
8 know if he was on the very first call; he
9 wasn't on the very first call.
10 Q. What was discussed during that very
11 first call?
12 A. We sent the letter over to Luskin; we
13 asked him -- I mean, I wanted to get a sense of
14 what Luskin's background was. We just tried to
15 give him the details of the case, and then we
16 let Luskin, kind of, be like the spokesperson
17 with the media.
18 Q. Earlier I had said I want to ask you if
19 you could give me an idea of the team concept.
20 Who was the leader of the team?
21 MS. NORMAN: Objection to form.
22 A. It was really a collective effort;
23 everybody had different roles.
24 Q. What was Luskin's role?
25 A. Luskin was criminal defense.

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1 E. CHENEY
2 MR. FURMAN: Off the record for
3 a moment.
4 (Whereupon, a discussion was
5 held off the record.)
6 Q. I'm going to show you something that's
7 not marked, but this is a better copy of the
8 first page of Exhibit 1, which is Jeh Johnson's
9 letter, dated August 30, 2012.
10 MS. NORMAN: Thank you.
11 Q. Now, you mentioned that Mr. Luskin was
12 retained. Was he retained to respond to this
13 letter that was received?
14 A. Yes.
15 Q. Part of what the letter indicates is
16 that, in addition to potential violations of
17 federal criminal law, there is a reference to
18 forfeiture of royalties. Do you see that?
19 A. Yes.
20 Q. It's at the very end of the first
21 paragraph?
22 A. Yes.
23 Q. Was Mr. Luskin also engaged to handle
24 that aspect as well?
25 MS. NORMAN: Objection to form.

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1 E. CHENEY
2 A. He was engaged to handle this letter and
3 all the elements in the letter, as far as I
4 know.
5 Q. Mr. Luskin wrote a letter in response
6 very shortly after. Do you recall that taking
7 place?
8 A. Now that you bring it up, yes.
9 Q. Do you know if Mr. Podlaski had any role
10 in preparing that letter?
11 A. I don't know.
12 Q. Do you know if Mr. Podlaski gave any
13 advice to Mr. Luskin in connection with that
14 response?
15 A. I believe Luskin talked to Podlaski, but
16 I don't know if he was an advisor or not; I
17 don't know what that conversation transpired.
18 Q. You don't know the details of that
19 conversation?
20 A. No, I think there were several
21 conversations, but I don't know.
22 Q. Were you involved in conversations
23 between Mr. Podlaski and Mr. Luskin?
24 A. Well, there were conference calls that
25 both Podlaski and Luskin were on.

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1 E. CHENEY
2 Q. When were those conference calls?
3 A. I don't know.
4 Q. Was it shortly after the letter from Jeh
5 Johnson?
6 A. Certainly, there were definitely then.
7 Q. Do you recall anything specific about
8 what Mr. Podlaski said during those conference
9 calls?
10 A. No.
11 Q. Do you have any recollection of what
12 Mr. Luskin said during those conference calls?
13 A. I think a bunch of times it had to do
14 with how we were going to respond to the media
15 and potential response to the letter, yeah.
16 Q. After the August 30, 2012, letter from
17 Jeh Johnson, did you have any separate
18 discussions with Kevin Podlaski?
19 A. I'm sure I did.
20 Q. Do you recall what they consisted of?
21 What happened during those calls?
22 A. I think basically I was, like, "what the
23 fuck are you doing -- have you done? Why are
24 you telling me this and why am I getting this?
25 Why did you tell us one thing, and now we're

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1 E. CHENEY
2 getting this?"
3 Q. How did he respond?
4 A. I don't remember; I mean, he would of
5 said what his office said, which was --
6 actually, I don't know. Did he sign this
7 agreement -- then he sort of spouted a lot of
8 legalese so I don't know exactly what he said,
9 though. One thing was that I think he said he
10 didn't have a copy of these agreements that
11 Matt had signed and I think you thought -- I
12 may have said to him, why wouldn't you have a
13 copy of that agreement; why wouldn't you do
14 your due diligence and get whatever agreements
15 were signed if Matt -- Matt had been in active
16 combat for thirteen years so what he may have
17 signed, then also, if you are -- so yeah.
18 Q. Is that the best that you can recall
19 about those conversations? Was there anything
20 else that you could think of?
21 MS. NORMAN: Objection to form.
22 You can answer.
23 A. We talked about -- I know there was more
24 discussion on response to the government than
25 there was discussions about, you know, what --

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1 E. CHENEY
2 how the government might deal with the
3 situation and whether politics had any role to
4 play in it and, you know, Kevin was asked his
5 opinion about his process, and we would ask him
6 what do you think is going to happen? Do you
7 think he did anything wrong? Where did you get
8 your information from?
9 Q. I want to just ask you about your
10 questions to or your conversations rather, with
11 Mr. Podlaski about his due diligence. What
12 specifically do you recall about that
13 conversation?
14 MS. NORMAN: Objection to form.
15 A. Well, I don't think I actually --
16 MS. NORMAN: Objection to form.
17 In your question, embedded was in
18 reference to conversations plural and
19 also a conversation.
20 MR. FURMAN: I'll make it a
21 cleaner question.
22 Q. You referenced asking Mr. Podlaski about
23 what due diligence he did. I just want to
24 explore that.
25 A. I'm pretty sure that I said, well,

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1 E. CHENEY
2 wouldn't you have gotten agreements that he
3 would need? Wouldn't you do that before you
4 give your opinion?
5 Q. Do you recall Mr. Podlaski's response?
6 A. You know, I don't know; this may --
7 honestly I -- I don't remember -- I know that
8 this is what I was thinking; I'm pretty sure I
9 said it, but I'm not 100 percent. I don't
10 remember all the calls that I had with
11 Podlaski; there were many of them.
12 Q. Well, let me ask you what you were
13 thinking.
14 A. Yeah.
15 Q. And let me set the stage.
16 Mr. Bissonnette hires a lawyer?
17 A. Mm-hmm.
18 Q. And to vet the book and then on
19 August 30th, there's this letter that comes in
20 from the government saying this book is not
21 permissible?
22 A. Mm-hmm.
23 Q. What's your reaction?
24 MR. JOHNSTON: Object to the
25 form of the question.

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1 E. CHENEY
2 THE WITNESS: What does this all
3 mean? Object to the form of the
4 question?
5 MS. NORMAN: It just means we
6 preserved it for the record and it
7 doesn't mean anything for your
8 answering.
9 A. What's my reaction? I'm livid; I'm just
10 angry. Why are we in this situation? Matt has
11 tried his best; I've tried my best to the abide
12 by the law; why are we getting this letter?
13 Q. You're livid at who?
14 A. The world; I'm like -- I mean, I don't
15 understand this; I'm upset that Kevin Podlaski
16 -- I don't understand why we're getting this
17 letter if Podlaski said what he said.
18 Q. Did you tell Podlaski that? That you
19 were upset?
20 A. Yes, I said why are we getting this
21 letter? What's the deal?
22 Q. I don't mean to use salty language, and
23 I was born and raised in the City so you can't
24 offend me, but what kind of language did you
25 use when you had that conversation with him?

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1 E. CHENEY
2 A. What did you do here? What's the deal?
3 Why is he getting this letter, you know?
4 Q. What was his response to that?
5 A. I mean, I don't know, you know -- you
6 know, I don't know; he's -- he said -- he
7 continued to stay by his party line; if Matt
8 was retired -- there's even an e-mail in which
9 it says something like, oh, the government has
10 this on their website, but it's not true
11 actually. If Matt was retired, he didn't need
12 to show this to them. If the operation was,
13 you know, a sensitive compartmentalized that --
14 there's a phrase sensitive compartmentalized
15 something, then he couldn't have talked about
16 it, but Matt did not sign a sensitive
17 compartmentalized such and such and, therefore,
18 Matt could talk about whatever he talked about
19 in the book, and he continued to insist that
20 the book had no classified information and that
21 the government, you know, that this was a load
22 of bullshit.
23 Q. After the Jeh Johnson letter, and as you
24 described your reaction, did you have a
25 separate conversation with Mr. Bissonnette

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1 E. CHENEY
2 about this?
3 A. I'm sure.
4 Q. Do you recall what you discussed with
5 him?
6 A. I mean, I had so many conversations with
7 him; I can't really say.
8 Q. Did you have any specific conversations
9 after the Jeh Johnson letter about Podlaski's
10 advice?
11 A. I'm sure I said what's going on? Both
12 of us were, like, this -- why are we in this
13 situation? Are they bullshitting us, the
14 government? Was Podlaski bullshitting us?
15 Who's right here?
16 Q. At that point in time, did you share
17 with Mr. Bissonnette a concern as to whether
18 Mr. Podlaski's advice was correct?
19 A. Yes.
20 Q. What did Mr. Bissonnette tell you about
21 that? How did he react to that subject?
22 A. He was concerned as well; we both had
23 the same concerns.
24 Q. The concern was basically whether
25 Mr. Podlaski's advice was correct or not?

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1 E. CHENEY
2 A. Yes.
3 Q. Did you express that to Mr. Luskin?
4 A. Yes.
5 Q. What did Mr. Luskin say about that?
6 A. Luskin had to do some research about it,
7 so it took a while for him to come back with an
8 answer.
9 Q. Did there come a time when Luskin did
10 the research and there was a determination that
11 the advice was incorrect?
12 A. Yes.
13 Q. Who told you that, that Mr. Podlaski's
14 advice was incorrect?
15 A. Luskin.
16 Q. When did he tell you that?
17 A. I don't know.
18 Q. I just need a two minute break. I just
19 want to talk to Izabell and move on to another
20 topic; is that okay?
21 A. Sure.
22 (Whereupon, a recess was taken
23 at this time.)
24 (Whereupon, August 12, 2012
25 E-mail was marked as Exhibit 140, for

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1 E. CHENEY
2 identification, as of this date.)
3 Q. I've shown you what's been marked as
4 Exhibit 140. This is an e-mail, dated
5 August 12th of 2012, from Mr. Bissonnette to
6 you, and it's entitled "follow-up notes." Do
7 you recall receiving that?
8 A. Yes.
9 Q. Do you recall that, that among other
10 things, Mr. Bissonnette was interested in a
11 multiple book series, a coffee table seal book,
12 and a leadership book? He references that in
13 the fourth paragraph of the e-mail.
14 A. Well, I just want to read the e-mail.
15 Yeah.
16 Q. In some sense I can appreciate this is,
17 sort of, intrusive questions about the
18 relationship you have with your clients; I
19 understand and respect that. In the e-mail
20 exchange, among other things, there's a
21 reference to a multiple book series, a coffee
22 table seal book, and a leadership book, some
23 fictional books, a motion picture, a possible
24 video game business, a tactical gear
25 development business and, I take it, all

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1 E. CHENEY
2 relating from No Easy Day or his publicity from
3 No Easy Day; is that fair to say?
4 A. No, no, I don't think he's separating
5 things out; tactical, Aerosoft, all these
6 things have nothing to do with No Easy Day.
7 Q. Were you working with Mr. Bissonnette to
8 capitalize on the back of the publication to No
9 Easy Day into other ventures?
10 MS. NORMAN: Objection to form.
11 A. The other ventures that he was thinking
12 about on his own of doing so -- and that he
13 would just discuss with me because I was the
14 person who was talking to him a lot at that
15 time.
16 Q. There is a reference to a dinner with
17 someone called Pleppler, P-L-E-P-P-L-E-R and,
18 again, this is why I mentioned I apologize for
19 asking you questions about your relationship
20 with Mr. Bissonnette; there seems at some point
21 to be a disconnect between the two of you about
22 who was being invited to a dinner. I just want
23 to know if it's relevant, so can you explain to
24 me what was happening there?
25 A. Yeah. A guy named Richard Pleppler

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1 E. CHENEY
2 wanted to throw a dinner for Matt, I think, on
3 publication night and I did not think that was
4 a very good idea because Pleppler is a media
5 person and I thought that Matt probably is not
6 used to dealing with the media and the media
7 didn't necessarily have his best interests at
8 heart and so I was recommending against it; he
9 wanted to do what he wanted to do, and so my
10 second course of action was to suggest that I
11 attend the dinner with him so that I could,
12 kind of, be there to play defense -- and
13 obviously it would also be helpful to me to be
14 there just for my own career as I say in this
15 note -- and he wanted to go solo is what he is
16 saying; he thought he could handle it himself.
17 Q. The timing of the ideas that
18 Mr. Bissonnette had about the coffee table
19 book, the fictional book series, all of those
20 things would have happened after the
21 publication of No Easy Day; correct?
22 A. Yeah.
23 Q. Was there any reason to hold back on
24 those ideas before the publication of No Easy
25 Day?

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1 E. CHENEY
2 A. I don't think he was holding back on
3 them; no, I think he already had discussions --
4 I mean the coffee table book, yes, but the
5 other things, I think they may have already
6 been in -- he had discussions independently of
7 me; it had nothing to do with me.
8 Q. These were all essentially marketing
9 plans and business opportunities that he was
10 exploring through not just notoriety through
11 the book No Easy Day but also through his
12 experiences as a Navy Seal?
13 A. Yeah, not to do with No Easy Day at all.
14 Q. There was a part of No Easy Day that
15 referenced Mr. Bissonnette's interest in
16 donating a share of the proceeds to charities
17 that relate to Navy Seals. Do you know what
18 the percentage of the proceeds were to be
19 donated?
20 A. I think all of it; he wanted to donate
21 almost everything.
22 Q. What charities have agreed to accept
23 that money, to the best of your knowledge?
24 A. I don't know which ones he was working
25 with; I don't know the names. He's talked to a

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1 E. CHENEY
2 lot of charities.
3 Q. Are you aware that the Navy Seal
4 Foundation turned down Mr. Bissonnette when he
5 approached them about receiving proceeds from
6 the book?
7 MR. JOHNSTON: Object to the
8 form of the question.
9 A. Yes.
10 Q. Do you know why the Navy Seal Foundation
11 turned Mr. Bissonnette down?
12 MR. JOHNSTON: Object to the
13 form of the question.
14 A. I think it was because he came to them
15 after the controversy, and they didn't want to
16 be associated with the controversy.
17 Q. Did you speak to anyone from the Navy
18 Seal Foundation as to why they rejected any
19 proceeds from Mr. Bissonnette's book?
20 A. No.
21 MR. FURMAN: Let's mark the next
22 two exhibits.
23 (Whereupon, September 17, 2014
24 Cheney Letter was marked as Exhibit 141,
25 for identification, as of this date.)

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1 E. CHENEY
2 (Whereupon, Attachment to
3 September 17, 2014 Cheney Letter was
4 marked as Exhibit 142, for
5 identification, as of this date.)
6 Q. I'm going to show you what's been marked
7 as Exhibits 141 and 142.
8 A. Okay.
9 MR. JOHNSTON: Which one is 141?
10 MR. FURMAN: The letter is 141
11 and the attachment is 142.
12 Q. Ms. Cheney, do you recall preparing
13 what's been marked as Exhibit 141?
14 A. Yes.
15 Q. At whose request did you prepare it?
16 A. Randy.
17 Q. Did you draft it yourself?
18 A. Yeah, yes.
19 Q. Did anyone assist you in the preparation
20 of this letter?
21 A. Assist me in the preparation? I had a
22 lawyer look at it to make sure I was, you know,
23 doing whatever I was supposed to be doing; a
24 different lawyer.
25 Q. A lawyer that you retained?

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1 E. CHENEY
2 A. Mm-hmm.
3 Q. I'm not going to ask you about the
4 advice; I just want to know who that lawyer is?
5 A. His name is Drew Kitchen, from Maynard
6 Cooper something, something.
7 Q. Mr. Kitchen is a partner of Mr. Enslin;
8 correct?
9 A. Yes.
10 Q. How did you come into contact with
11 Mr. Kitchen?
12 A. I met him through a client.
13 Q. Eventually through Mr. Kitchen, that is
14 how Mr. Bissonnette was able to find Mr. Enslin
15 for his work on No Easy Day?
16 A. Yes.
17 Q. I just want to complete the circle on
18 that. So referring to Exhibit 141, the first
19 paragraph, it states that No Easy Day sold
20 approximately 1.4 million hard cover books
21 since publication; approximately 30,000 audio
22 books; 75,000 digital audio books, and 55,000
23 paperback books as well as hundreds of
24 thousands of books in territories around the
25 world. Do you see that?

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1 E. CHENEY
2 A. Yes.
3 Q. Where did you get that information from?
4 A. That would come from royalty statements,
5 the publisher.
6 Q. If I wanted to get the source from that
7 information from you, how would I get it?
8 A. It's the publisher.
9 Q. The publisher?
10 A. Yeah.
11 Q. The numbers are rounded figures
12 obviously, so does the publisher have the
13 actual numbers in detail?
14 A. Yes.
15 Q. Who rounded down the numbers?
16 A. Clearly I do cause I wrote approximately
17 because the numbers, you know, this is 2014,
18 they might sell many more the week later so you
19 can't -- I don't know as of this exact date; I
20 rounded the numbers.
21 Q. I'm now focused on paragraph 2. Did you
22 speak to anyone in the film industry that had
23 an interest in making a movie out of the book
24 No Easy Day?
25 MS. NORMAN: Objection to form.

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1 E. CHENEY
2 A. Well, we hired a film agent, United
3 Talent Agency, as I said here, to handle the
4 film rights, potential film rights to the book.
5 Q. Would you deal directly with a movie
6 house or any kind of film producer?
7 A. Generally we go through -- if I deal
8 directly with them, it's because UTA introduced
9 me to them.
10 Q. Who would UTA have handle this
11 particular matter?
12 A. There were a couple of people who were
13 the primary people; one was Howard Sanders; the
14 other was Jay Sures, S-U-R-E-S.
15 Q. Now, the information that's in
16 paragraph 2, is that based on information that
17 you received from Mr. Sanders and Mr. Sures?
18 A. From Mr. Sanders.
19 Q. Do you have any independent information
20 that would be the source for paragraph 2 other
21 than Mr. Sanders?
22 A. No other independent information except
23 experience of selling an experience in the
24 market place.
25 Q. For example, the price of \$175,000 for

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1 E. CHENEY
2 the option to purchase the movie applicable
3 against the purchase price of \$1,000,000, where
4 did you get that number from?
5 A. Mr. Sanders.
6 Q. Do you know where Mr. Sanders got that
7 figure from?
8 A. Mr. Sanders does about 200 deals a year
9 for sales of book to film for options like this
10 and so he has a pretty solid idea of what
11 things are going to sell for; he's been doing
12 it for, like, thirty years.
13 Q. Other than your reliance on Mr. Sanders,
14 do you have any basis for the numbers \$175,000
15 for the option and a \$1,000,000 for the
16 purchase price?
17 A. Similar to Mr. Sanders; I've been doing
18 it for a long time so I have a sense of what
19 the range of what a project might go for; it
20 sort of contributes to this number.
21 Q. Can you tell me what project that you
22 worked on that you were able to obtain anything
23 that is in the neighborhood of \$175,000 for an
24 option and \$1,000,000 for movie rights?
25 A. Sure. Let's see, I recently sold a book

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1 E. CHENEY
2 about a group of woman soldiers who went out
3 with cultural support teams who went out with
4 the Army Rangers into the field during the war,
5 and I sold that for -- I used UTA, a different
6 agent at UTA, and they sold that to Fox for
7 \$500,000 purchase price against, I believe,
8 \$1,000,000, so that's actually larger than the
9 \$175,000. I've sold books for -- Howie Sanders
10 also sold a book for me about a team of soccer
11 -- a soccer team full of kids from war torn
12 countries who landed in an all white town in
13 Alabama and won against a wealthy other team;
14 we sold that right for \$2,000,000. I sold
15 Joshua Foer's memoir, Moonwalking With
16 Einstein, I think first for, like, \$250,000
17 against somewhere between \$750,000 and
18 \$1,000,000, and then we optioned it again, I
19 think for \$175,000, maybe.
20 Q. What was the subject matter of that?
21 A. That was about memory. The one that I
22 most recently sold was about the military; the
23 one I just told you about; it's called Ashley's
24 War.
25 Q. Of the three books that movie rights

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1 E. CHENEY
2 were sold to that you referenced about the
3 female military personnel, the soccer team,
4 international soccer team, and the memory book,
5 were they before or after your letter of
6 September 17, 2014?
7 A. The military one, I believe, is after
8 the letter; the other two are before.
9 Q. The soccer team and the memory books,
10 they were negotiated through Mr. Sanders; is
11 that --
12 A. Yes.
13 Q. Do you know one way or the other whether
14 a movie house or a film producer would have
15 been interested in No Easy Day?
16 A. Well, they were also talking about
17 television, so it's not clear; it could of been
18 an option for a movie or a TV series; we
19 assumed there would be interest, but, you know,
20 you never know; it wasn't 100 percent because
21 Zero Dark Thirty had also come out so --
22 Q. Was there any actual purchaser that was
23 identified for the movie rights or film rights
24 or television rights to No Easy Day?
25 A. What happened was, as soon as Jeh

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1 E. CHENEY
2 Johnson sent that letter and Bob Luskin then
3 went into communication with Johnson, Luskin
4 immediately said we won't -- the government
5 said we don't want you to pursue any other
6 publicity or sell any other ancillary rights to
7 the project, so we did not pursue it after
8 that.
9 Q. Now, in paragraph 3, there's a reference
10 to Marcus Luttrell, M-A-R-C-U-S, Luttrell is,
11 L-U-T-T-R-E-L-L and that is the book that deals
12 with the film, Lone Survivor; I don't know if
13 the book is the same tile?
14 MR. JOHNSTON: It is.
15 Q. It is?
16 A. Yes.
17 Q. Sorry; I only read Springstein
18 biographies. The forecast that's indicated in
19 paragraphs 3A through 3D, are they based solely
20 on a comparison to Mr. Luttrell's book?
21 A. It was based on Luttrell's book and also
22 just a general conversation with Ben Sevier
23 about what he thought if they might publish if
24 a movie had been made.
25 Q. When did you have that general

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1 E. CHENEY
2 discussion with Mr. Sevier?
3 A. When I was preparing this.
4 Q. So, again, I just want to make sure I
5 know the answer. In connection with the
6 forecast that is set forth in paragraphs 3A
7 through 3D of Exhibit 141, you based it on the
8 information relating to Mr. Luttrell's book in
9 what you described as a general conversation
10 with Mr. Sevier?
11 A. Yes.
12 Q. Where did you get the information about
13 Mr. Luttrell's book?
14 A. I believe I got that from BookScan, but
15 I don't know for sure. I might have gotten it
16 from Ben himself.
17 Q. I just want to talk about or ask you
18 questions, rather about No Hero, the second
19 book. When was the decision made to work on a
20 second book by Mr. Bissonnette?
21 MS. NORMAN: Objection to form.
22 A. I don't know exactly; it was a long time
23 after the publication of No Easy Day.
24 Q. Was it your idea or his idea?
25 A. I don't believe it was my idea; again,

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1 E. CHENEY
2 it was a team effort. I think it was
3 discussion with Ben, myself, Matt, and Kevin
4 Maurer as to what they wanted to do.
5 Q. What is No Hero about?
6 A. I think the subtitle is an autobiography
7 of a Navy Seal; so it's lessons learned -- it's
8 about lessons learned during the military --
9 while he was in the military.
10 Q. Is it about any particular mission or
11 any specific operation that Mr. Bissonnette was
12 involved in?
13 A. I think it goes through several
14 operations that Bissonnette was involved in.
15 Q. Now, there's a reference in paragraph 5
16 to a delay; it indicates here that you believe
17 that there was some kind of financial impact on
18 sales of No Hero as a result of the delay in
19 reviewing -- the delay caused by the
20 government. Do you know how that delay by the
21 government in reviewing No Hero is related to
22 the issues that Mr. Bissonnette had in
23 connection with No Easy Day?
24 A. Can you tell me that question, again.
25 Q. Sure. I'll rephrase it. After the

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1 E. CHENEY
2 controversy erupted following Mr. Johnson's
3 August 30, 2012 letter, are you aware that the
4 government began to investigate other aspects
5 of Mr. Bissonnette's career?
6 A. Yes, I was aware.
7 Q. Those aspects included some of his
8 private business opportunities that he was
9 exploring regarding tactical gear and other
10 things. Are you aware of that?
11 A. Yeah, I'm not sure when I became aware
12 of that, but I am aware of that now.
13 Q. To the best of your knowledge, that had
14 nothing to do with the book No Easy Day;
15 correct?
16 A. Yeah, I mean, I wasn't apart of that.
17 Q. The investigation of the government into
18 some of the artifacts that Mr. Bissonnette may
19 have kept following the bin Laden raid,
20 including photographs of the corpse of bin
21 Laden, bin Laden's hat, other aspects from the
22 raid; are you aware of that investigation?
23 MR. JOHNSTON: Object to the
24 form of the question.
25 A. I wasn't aware of that investigation,

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1 E. CHENEY
2 no, so I didn't really know what the details
3 were; I didn't know about any photographs; the
4 only thing I knew about was what I said, the
5 hat.
6 Q. Do you know, one way or the other,
7 whether the government's inspection of No Hero
8 was colored by any of those investigations that
9 were conducted?
10 MS. NORMAN: Objection to form.
11 A. I don't know.
12 Q. In paragraph 8 there's a reference to
13 Terry Gross's show, did you speak to Ms. Gross
14 about having Mr. Bissonnette on the show?
15 A. No.
16 Q. How is it that you say that Mr.
17 Bissonnette lost an opportunity to be
18 interviewed on Fresh Air?
19 A. There's a publicity plan in commitments
20 laid out by the publisher once they've
21 solidified the commitment and so I'm privy to
22 that plan and once Luskin had spoken to Jeh
23 Johnson and said that we would seize any
24 promotional activities; that was one of the
25 things that had to go.

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1 E. CHENEY
2 Q. Do you have any direct information, one
3 way or the other, as to whether Mr. Bissonnette
4 was going to be on the show with Terry Gross on
5 MPR?
6 A. I mean -- yeah.
7 Q. You wrote it down, but I want to know
8 what your basis is for saying that?
9 A. Yeah, because Christine Ball is the
10 publicist and she says we've booked X, Y, and
11 Z.
12 Q. So the source of the information from
13 paragraph 8 is Christine Ball?
14 A. Mm-hmm.
15 Q. The appearance on the Today Show, that
16 is also Christine Ball as the source of that
17 information?
18 A. Yes.
19 Q. You don't any have firsthand information
20 about that?
21 A. Not -- no, that's conversations.
22 Q. The national radio tour, that also was
23 information you received from Ms. Ball?
24 A. Yes.
25 Q. You don't have any firsthand information

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1 E. CHENEY

2 on that?

3 A. That's all conversations; we had several

4 conversations; what is the publicity plan;

5 what's he going to go on.

6 MR. FURMAN: I think I just need

7 a few minutes just to go through my

8 notes to make sure I didn't miss

9 anything, I'm sure I did, so I need a

10 five minute break. Is that okay?

11 MS. NORMAN: Yes, of course.

12 (Whereupon, a recess was taken

13 at this time.)

14 Q. Ms. Cheney, I showed you what's been

15 marked previously as Exhibit 14. Do you recall

16 having an e-mail exchange with Richard Heller

17 around January 12th of 2012?

18 A. Yep.

19 Q. Who is Richard Heller?

20 A. He was a lawyer we hired to review the

21 publishing agreement for Matt.

22 Q. Did Mr. Heller have any involvement with

23 issues that relate to Mr. Bissonnette's ability

24 to tell the story about the bin Laden raid?

25 A. Can I just read this for a second?

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1 E. CHENEY

2 Q. Sure.

3 A. Okay. Thank you.

4 Q. Mr. Heller, what was his involvement?

5 A. Heller reviewed the publishing agreement

6 for Matt; that was one thing that he did.

7 Q. In paragraph 2 below, there's a

8 January 12, 2012 e-mail at 12:18 p.m., and it

9 says that you wrote the following. Do you see

10 that in the middle of the page?

11 A. Mm-hmm.

12 Q. Are you writing to Richard is that the

13 person --

14 A. Mm-hmm.

15 Q. There's a number of paragraphs that are

16 numbered and in paragraph 2, it starts off "we

17 have a different lawyer now in terms of the

18 military review stuff." Do you see that

19 reference?

20 A. Yes.

21 Q. Was there anyone else that was handling

22 the military review stuff before?

23 MS. NORMAN: Objection to form.

24 Q. The reason I'm asking you is that you

25 said "we have a different lawyer now." I want

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1 E. CHENEY

2 to know if there was someone else in place?

3 A. No, there wasn't someone else in place.

4 I'm not sure if this was referring -- is trying

5 to tell Heller that he -- no, it can't be that,

6 so maybe this is shedding light on the fact

7 that we had talked to two different -- I think

8 I had told him that I had talked to this guy,

9 Randy Moss, and then I wanted to talk to a

10 couple of different people and that then I

11 think Heller was in Sierra, Costa Rica and I

12 think while he was in Costa Rica, I met -- you

13 know, I had a referral to Podlaski and so I was

14 updating him that because Podlaski, as you can

15 see here, was a Special Forces guy himself and

16 he knew these agreements, that we were going to

17 work with Podlaski on helping Matt to adhere to

18 whatever legal obligations he had.

19 Q. In paragraph 2 the four lines down, you

20 wrote that "Mark seems to have a very clear

21 understanding of what this lawyer is saying.

22 He is going to get his papers from the command

23 office and then show those papers to this

24 Indian lawyer." Do you see that?

25 A. Yes.

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1 E. CHENEY

2 Q. Where did you get that information that

3 Mr. Bissonnette was going to get his papers

4 from the command office? Who told you that?

5 A. I think Mark told me that -- I mean

6 Matt; we called him Mark.

7 Q. So it was Mr. Bissonnette who told you

8 that he was going to get his papers from that

9 command office and then show those papers to --

10 A. It's possible that Podlaski told me

11 that. It's either Podlaski told me that or

12 Matt told me that; I'm not sure.

13 Q. But either way, your source for the

14 information that's contained in that sentence

15 that Mr. Bissonnette was going to get his

16 papers from the command office and show them to

17 Mr. Podlaski, that either came from Mr.

18 Bissonnette himself or Mr. Podlaski?

19 A. Correct; I'm guessing it's Bissonnette,

20 and it's referring to any legal documents that

21 might be relevant to this situation.

22 Q. Now, I'm going to fast forward in time.

23 This was January and now to August of 2012.

24 After the Jeh Johnson letter was received, was

25 there any discussion about stopping the

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1 E. CHENEY
2 publication of the book?
3 A. Yes, I think the Jeh Johnson letter
4 asked -- well, I'm not sure actually if we have
5 the Jeh Johnson letter.
6 Q. It's right there and you can refer to
7 it. The Jeh Johnson letter says that, "further
8 dissemination of the book would aggravate the
9 violations that were listed in the letter"?
10 A. Right.
11 Q. Was there a discussion about preventing
12 further dissemination of the book?
13 A. Yes, but the book had already been
14 disseminated; 250,000 copies were already at
15 book stores nationwide, so basically that was
16 impossible and I believe, as he states here in
17 the letter, that some of the books had already
18 been divulged to the public or had already been
19 released because what happens is the books are
20 sent to the -- let's say to Barnes & Noble
21 because they'll get \$40 bucks and it's signed
22 and it says don't open until X date, but many
23 people open them anyway and put them on the
24 shelves even though they're not supposed to.
25 Q. Now, just a couple of follow-up

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1 E. CHENEY
2 questions based on what your answer was. The
3 book eventually, and when I say "the book," No
4 Easy Day, sold far more than 250,000 copies;
5 correct?
6 A. Correct.
7 Q. Just generally, how many copies were
8 sold?
9 A. The book sold over 2,000,000 copies.
10 Q. So as of the August 30th letter, only
11 250,000 books were in the book shelves or in
12 the book stores; correct?
13 A. I believe so, yes.
14 Q. After that and this is rounded off just
15 to make it easier, the 1.75 million additional
16 books were disseminated after Mr. Johnson's
17 August 30th of 2012 letter; correct?
18 A. Yep.
19 Q. Why?
20 A. Ask the government. If they were so
21 concerned about classified information, I
22 assume they would have been able to get an
23 injunctive relief and had the book stopped, but
24 they didn't do that.
25 Q. If Jeh Johnson, in his letter, was

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1 E. CHENEY
2 saying further dissemination of the book would
3 aggravate the violations that were listed in
4 the letter, why would another 1.75 million
5 copies of the book then be sold?
6 MS. NORMAN: Objection to form.
7 A. Again, this is -- after this was
8 received, Luskin called Jeh Johnson. Jeh
9 Johnson, I don't believe said stop publication
10 of the book. So if the government doesn't say
11 stop the publication of the book, why would
12 Penguin stop publication of the book, and I
13 don't think at this point it's really -- yeah,
14 I mean why would they stop.
15 Q. Going back in time when there were a
16 series of conference calls about what to do in
17 response to Jeh Johnson's letter, was there any
18 discussions saying, look, we know the books are
19 out into the book stores, but let's send out a
20 message to all the book stores that we have to
21 wait until this issue is resolved with the
22 government before the book can be sold?
23 MS. NORMAN: Objection to form.
24 A. I don't know if that's really possible
25 at this point. I wasn't also clear that the

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1 E. CHENEY
2 government was right. I mean, I think that,
3 you know, there is a -- potentially the
4 government was doing this for political reasons
5 and not necessarily -- they didn't necessarily
6 have legal grounds to stand on so -- and like I
7 said, the process was already underway; the
8 books were already in the stores and I believe
9 that the government had also said they didn't
10 think there was any classified information in
11 it, that it was just the fact of the review, so
12 by that point, if the issue is that if the book
13 had not been reviewed -- not that if it didn't
14 have classified information in it, then why
15 wouldn't you continue with the publication.
16 Q. Is that what you just expressed
17 something that was told to you, or was it a
18 consensus agreement amongst the various people
19 involved on the Matt Bissonnette team?
20 MS. NORMAN: Objection to form.
21 Q. Do you understand what I mean "the
22 team"?
23 A. What was told to me.
24 Q. What you just described as the view that
25 the government may be wrong and that there was

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1 E. CHENEY
2 no classified information in the book, was that
3 a conclusion that you arrived at, or did
4 someone else tell you that?
5 MS. NORMAN: Objection to form.
6 A. Podlaski is the one who suggested that
7 the government was not right, and they were
8 just trying scare tactics.
9 Q. Did Mr. Luskin agree with that?
10 MS. NORMAN: Objection to form.
11 A. I don't remember what Luskin said about
12 it; he wasn't sure; he was new to the
13 situation.
14 MR. FURMAN: I am passing the
15 witness. Thank you, Ms. Cheney.
16 THE WITNESS: Thank you.
17 EXAMINATION BY
18 MR. JOHNSTON:
19 Q. Ms. Cheney, Mr. Podlaski has indicated
20 that he did not recommend against a
21 prepublication review; is that true?
22 A. That's not true.
23 Q. Did he affirm or did he recommend that
24 No Easy Day not undergo a prepublication
25 review?

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1 E. CHENEY
2 A. Yes, he affirmed -- I believe he
3 recommended that.
4 Q. Even after Jeh Johnson's letter arrived,
5 did he ever recommend a republication review be
6 conducted?
7 A. Well, the book was already published so
8 he continued to stand by his opinion that the
9 book did not require a republication review.
10 Q. Mr. Podlaski has indicated that
11 Mr. Luskin fired him after Mr. Luskin was
12 hired; is that consistent with what you know
13 about the relationship between Mr. Podlaski and
14 Mr. Bissonnette?
15 A. No, Luskin would have no authority to
16 fire Podlaski; that's not true.
17 Q. Were all of your talks with Mr. Podlaski
18 concerning No Easy Day as an agent for
19 Mr. Bissonnette?
20 A. You mean was the content of my talks
21 with Podlaski generally about No Easy Day and
22 the publication of the book?
23 Q. And serving in your role as the literary
24 agent for Matt?
25 A. Yes.

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1 E. CHENEY
2 Q. Did you ever pressure Mr. Bissonnette
3 not to do a republication review or suggest he
4 should not?
5 A. I would never pressure him to do that;
6 we took Podlaski's advice and went with it.
7 Q. Are you aware of Dutton ever suggesting
8 that Mr. Bissonnette not do a prepublication
9 review?
10 A. No, they would never do that.
11 Q. Were you in the phone calls where
12 Mr. Maurer reported on his conversations with
13 SOCOM and the Pentagon after the journalistic
14 storm hit?
15 A. Yes.
16 Q. What did Mr. Maurer report that he had
17 heard from his sources at SOCOM and the
18 Pentagon about the book?
19 A. They had said there was nothing they
20 could tell that was classified, but they were
21 pissed that he hadn't gotten that
22 prepublication review.
23 Q. Did you ever hear from anyone that the
24 government would have permitted a review of the
25 book after the August 30th letter from Jeh

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1 E. CHENEY
2 Johnson under any circumstances like stop the
3 sale of the book and submit it even at that
4 late date?
5 A. It was too late.
6 Q. I understand that. My question is, did
7 anyone from the government ever suggest they
8 would have permitted such a review?
9 A. You mean at that point?
10 Q. Right.
11 A. No.
12 Q. Let me direct your attention first to
13 the subject which is Mr. Podlaski's service as
14 attorney for Mr. Bissonnette in connection with
15 Freedom of Information Act requests. Do you
16 remember being asked some questions about that
17 earlier?
18 A. Yes.
19 Q. Let me show you what's previously been
20 marked as Exhibit 101, which reflects an e-mail
21 from Mr. Podlaski to the FOIPA -- referencing
22 FOIPA requests to the Records Information
23 Dissemination Section containing a request for
24 Freedom of Information Act information, and
25 then there's an attached link to the letter

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2 similar to the one sent in September. Does

3 that refresh your memory on whether or not he

4 was still pursuing new Freedom of Information

5 Act requests as late as November 2012?

6 A. That must of been where I got the

7 November date from.

8 Q. Let me now show you what's previously

9 marked as Exhibit 103 and ask you first off,

10 who is Alex Jacobs?

11 A. He's one of my employees.

12 Q. 103 is an e-mail from him to Mr.

13 Podlaski, dated May the 8th of 2013, requesting

14 the reply; were you aware on or about May 8th

15 of 2013 that Mr. Jacobs was corresponding with

16 Mr. Podlaski still about the Freedom of

17 Information Act request?

18 A. Yes.

19 Q. Then there is a reply and there's some

20 communication in Exhibit 107 between Mr. Owen

21 and Mr. Podlaski, dated the following day,

22 May 9th; I don't see you copied on these,

23 although Alex was copied on some of them. Were

24 you aware that Mr. Bissonnette was

25 communicating directly with Mr. Podlaski as

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1 E. CHENEY

2 late as May 9th about the Freedom of

3 Information Act request?

4 A. I don't remember.

5 Q. You said something about the billing and

6 well, I'm not sure I can demonstrate who that

7 one is from, so let me just stop.

8 MR. JOHNSTON: That's all the

9 questions I have at this time. We'll

10 reserve the remainder of our questions

11 until the time of trial. I do want to

12 put on the record for you that there was

13 a discussion of e-mails between

14 Ms. Cheney and Mr. Luskin earlier and I

15 have checked with Robert and Robert has

16 checked with Mr. Luskin's attorney; they

17 each confirmed for me that there are no

18 e-mails that were withheld under the

19 basis of privilege between the dates of

20 August and December 31st such that your

21 request for those would generate any.

22 MR. FURMAN: Okay. Thank you.

23 I appreciate that.

24 MS. NORMAN: I have about one or

25 two questions.

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1 E. CHENEY

2 MR. FURMAN: Sure, why not.

3 EXAMINATION BY

4 MS. NORMAN:

5 Q. Ms. Cheney, you testified about

6 collecting certain documents in connection with

7 the subpoena that you were served in this case?

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes.

11 Q. You testified that you produced a folder

12 of documents to Mr. Johnston; right?

13 A. Yes.

14 Q. You produced documents from your e-mails

15 to Mr. Johnston?

16 A. Yes.

17 Q. Was it your understanding that

18 Mr. Johnston would be producing those documents

19 to the other side in connection with your

20 discovery obligations?

21 A. Yes.

22 Q. Based on what you described that you

23 did, what's was your level of confidence that

24 what you produced to Mr. Johnston was

25 everything in your possession or custody

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2 relating to Matt Bissonnette and this

3 engagement as his agent?

4 A. I'm confident that I gave them whatever

5 I had regarding the case.

6 MS. NORMAN: Great. Thank you.

7 That was my only question.

8 MR. JOHNSTON: Let me put on the

9 record, if there was anything that was

10 not produced then the overwhelming

11 probability is that, that's on our

12 office because Ms. Cheney sent them to

13 us, and we do have the one document that

14 we produced today, which did not get

15 produced.

16 MR. FURMAN: Thank you.

17 THE WITNESS: Thank you.

18 (Time Noted: 4:05 p.m.)

19

20 ELYSE FAITH CHENEY

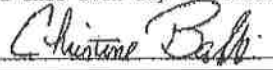
21

22 Subscribed and sworn to before me

23 this ____ day of _____, 2017.

24 _____

25 Notary Public

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